SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 579.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

OSCAR KLAYER, CHARLES HAMBURGER, JOSEPH EMERY ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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1 Supreme Court of the United States.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
OSCAR KLAYER, CHARLES HAMBURGER, JOSEPH EMERY, Edgar Wise, George Brown, Grant Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, William Davis, defendants in error. } No. ——.

Transcript.

Error to the District Court of the United States for the Western Division of the Southern District of Ohio.

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(Indorsed:) Office of the Clerk Supreme Court U. S. Received Jul. 19, 1917.

2 No. 1140.

UNITED STATES DISTRICT COURT,
Southern District of Ohio, Western Division, ss:

In the District Court of the United States within and for the district and division aforesaid. Present: the honorable Howard C. Hollister, judge. Among the proceedings had were the following, to-wit:

THE UNITED STATES OF AMERICA,
vs.
OSCAR KLAYER, CHARLES HAMBURGER, Joseph Emery, Edgar Wise, George Brown, Grant Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, and William Davis. } Indictment. No. 1140.

Be it remembered, that, to-wit, on the twenty-fifth day of January, in the year of our Lord one thousand nine hundred and seventeen, came the grand jurors of the United States of America, within and for the western division of the southern district of Ohio, and

presented to the court their certain bill of indictment herein, which said bill of indictment is clothed in the words and figures following, to-wit:

3 In the District Court of the United States of America for the Southern District of Ohio, Western Division. Of the October term, in the year nineteen hundred and sixteen.

SOUTHERN DISTRICT OF OHIO,
Western Division, ss:

Count One—Section 19, Penal Code.—The grand jurors for the United States of America, empaneled and sworn in the District Court of the United States for the Western Division of the Southern District of Ohio, at the October term thereof, in the year nineteen hundred and sixteen, and inquiring for that division and district, upon their oaths and affirmations, charge and present that Oscar Klayer, Charles Hamburger, Joseph Emery, Edgar Wise, George Brown, Grant Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, William Davis, together with other persons whose names are to the grand jurors unknown, throughout the period of time from October first, nineteen hundred and sixteen, to and including November seventh, nineteen hundred and sixteen, in Hamilton County, within the State of Ohio, and within the Western Division of the Southern District of said State of Ohio, and within the jurisdiction of the above-entitled court, did feloniously conspire, combine, confederate and agree together, and with other persons whose names are to the grand jurors unknown, to injure, oppress, threaten, and intimidate certain citizens of the United States, to wit:

James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, Willia E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John
4 Krause, William F. Thompson, and George Hodges, and each of them, in the free exercise and enjoyment of certain rights and privileges secured to them and each of them by the Constitution and laws of the United States, to wit:

First, of being candidates for presidential electors from the State of Ohio at a general election which was to be and in fact was held in the State of Ohio and in the first congressional district thereof on said seventh day of November, at which time presidential electors for the State of Ohio were to be and in fact were voted for, chosen, and elected, and at which time a United States Senator for the State of Ohio was to be and in fact was voted for, chosen, and elected, and at which time a Representative in the Congress of the United States of America, in said first congressional district of Ohio, was to be and in fact was voted for, chosen, and elected.

Second, of having qualified voters appear at the poles and vote at said election for presidential electors.

Third, of having only qualified voters vote at said election for presidential electors.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for presidential electors.

Fifth, of having their election or rejection decided and determined by voters who had not been bribed and by votes which had not been purchased.

Sixth, of having each of the precinct election boards at said election make a true, correct, and accurate count and return of the legal and only the legal votes cast by qualified voters for presidential electors.

First, by then and there bribing a large number of otherwise qualified voters at said election and promising them in advance of
5 their voting sums of money to vote against said presidential electors, and each of them, and to vote in favor of opponents of said presidential electors, and by causing the said voters so bribed and promised as aforesaid to purposely and intentionally place and cause to be placed, each respectively, his said vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Joseph Emery, Edgar Wise, George Brown, Grant Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, William Davis, and other persons whose names are as aforesaid to the grand jurors unknown.

Second, and also by causing each of said precinct election boards to accept and receive said illegal votes, and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return;

That in pursuance of said conspiracy, and to effect the object thereof, the defendants injured the said James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges and bribed a large number of otherwise qualified voters and caused the said illegal and wrongful votes of Joseph Emery, Edgar Wise, George Brown, Grant Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, William Davis, and other persons whose names are to the grand jurors unknown, to be cast and counted at said election, and caused the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and
6 return of the votes cast at said election by including said illegal votes in said count and return;

That the said James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges were candidates for presidential electors at said election, and their names appeared upon the ballots to be voted thereat; that neither was a Senator or Representative or person holding office of trust or profit under the United States on said day or at any time within two years immediately prior thereto; that neither had ever engaged in insurrection or rebellion against the United States or given aid or comfort to the enemies thereof; that each was at said time, and had been for more than five years immediately prior thereto, a bona fide resident of the State of Ohio; that each on said day was twenty-five years old or upwards, and was at said time a male citizen of the United States, and each was a resident voter of a ward and precinct within the State of Ohio, in which wards and precincts they had respectively resided for more than thirty days immediately prior to said election; that each was a qualified voter and entitled to vote at said election; that each possessed all the qualifications required by law for presidential electors, including the qualifications above set out; that the name of each appeared upon the ballot to be voted for at said election.

7 And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation, and agreement the said Oscar Klayer, Charles Hamburger, Joseph Emery, Edger E. Wise, George Brown, Grant Brown, Joseph Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, and William Davis and other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate, and agree together to injure, oppress, threaten, and intimidate a certain citizen of the United States, to wit, Atlee Pomerene, in the free exercise and enjoyment of certain rights and privileges secured to him by the Constitution and laws of the United States, to wit:

First, of being a candidate for United States Senator from the State of Ohio at said election.

Second, of having qualified electors appear at the polls and vote at said election for United States Senator.

Third, of having only qualified voters vote at said election for United States Senator.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for United States Senator.

Fifth, of having his election or rejection decided and determined by voters who had not been bribed and by votes which had not been purchased.

Sixth, of having each of the precinct election boards at said election make a true, correct, and accurate count and return of the legal, and only the legal, votes cast by qualified voters for United States Senators.

(First), by then and there bribing a large number of otherwise qualified voters at said election and promising in advance of their voting sums of money to vote against the said Atlee Pomerene,
8 and to vote for an opponent of said Atlee Pomerene, and by causing the said voters so bribed and promised as aforesaid to purposely and intentionally place and cause to be placed, each respectively, his said vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Joseph Emery, Edgar E. Wise, George Brown, Grant Brown, Joseph Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, and William Davis, and other persons whose names are to the grand jurors unknown, and also,

(Second), by causing each of said precinct election boards to accept and receive said illegal votes, and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

That in pursuance of said conspiracy, and to effect the object thereof, the defendants feloniously injured the said Atlee Pomerene, and bribed a large number of otherwise qualified voters and caused the said illegal and wrongful votes of Joseph Emery, Edger E. Wise, George Brown, Grant Brown, Joseph Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, and William Davis, and other persons whose names are to the grand jurors unknown, to be cast and counted at said election, and caused the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election, by including said illegal votes in said count and return.

That the said Atlee Pomerene was a candidate for United States Senator from the State of Ohio at said election; that his name appeared upon the ballots to be voted for at said election for said office.

That on said day the said Atlee Pomerene was more than
9 thirty years of age, and was and for more than nine years last past had been a citizen of the United States and a resident and inhabitant of the State of Ohio and of the city of Canton, in the county of Stark, and of the Second Ward of said city, and that he was then and theretofore duly registered and entitled to vote therein according to the requirements of law; that he had never engaged in insurrection or rebellion against the United States or given aid or comfort to the enemies thereof, and that he possessed all the qualifications required by law for United States Senator, including the qualifications above set forth.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation

and agreement, the said Oscar Klayer, Charles Hamburger, Joseph Emery, Edgar E. Wise, George Brown, Grant Brown, Joseph Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner and William Davis and said other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate and agree together to injure, oppress, threaten and intimidate a certain citizen of the United States, to-wit, Edward H. Brink, in the free exercise and enjoyment of rights and privileges secured to him by the Constitution and laws of the United States, to-wit:

First, of being a candidate for Representative in Congress for the first congressional district of the State of Ohio, at said election.

Second, of having qualified voters appear at the polls and vote at said election for Representative in Congress from said district.

Third, of having only qualified voters vote at said election for Representative in Congress from said district.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted and returned at said election for Representative in Congress from said district.

Fifth, of having his election or rejection decided and determined by voters who have not been bribed and by votes which have not been purchased.

Sixth, of having each of the precinct election boards at said election make a true, correct and accurate count and return of the legal and only the legal votes cast by qualified voters for Representative in Congress in said congressional district.

(First), by then and there bribing a large number of otherwise qualified voters at said election and promising them in advance of their voting sums of money to vote against the said Edward H. Brink and in favor of an opponent and by causing the said voters so bribed and promised, as aforesaid, to purposely and intentionally place and cause to be placed, each respectively, his own vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Joseph Emery, Edgar E. Wise, George Brown, Grant Brown, Joseph Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, and William Davis, and other persons whose names are to the grand jurors unknown; and also

(Second), by causing each of said precinct election boards to accept and receive illegal votes and to make an untrue, incorrect and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

That in purchase of said conspiracy, and to effect the object thereof, the defendants feloniously injured the said Edward H. Brink in the manner so planned as aforesaid and bribed a large number of otherwise qualified voters and caused the said illegal and wrongful votes of Joseph Emery, Edgard E. Wise, George Brown, Grant Brown, Joseph Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner and William Davis to be cast and counted at said election; and caused the election boards in the various precincts of said congressional district to accept and

receive said illegal votes and to make an untrue, incorrect and inaccurate count and return of the votes cast at said election by including said illegal votes in said count and return.

That the said Edward H. Brink was a candidate for Member of the House of Representatives in the Congress of the United States of America in the first congressional district of the State of Ohio at said election; that his name appeared upon the ballots to be voted for at said election for said office; that on said election day the said Edward H. Brink was more than twenty-five years of age and was, and for more than seven years immediately prior thereto has been, a citizen of the United States, a resident and inhabitant of the State of Ohio and of the city of Norwood, in the county of Hamilton, and of the second ward of said city, and that he was then and theretofore duly registered and entitled to vote therein according to the requirements of law; that he had never engaged in insurrection or rebellion against the United States or given aid or comfort to the enemies thereof, and he possessed all the qualifications required by law for a Member of the House of Representatives of the United States of America, including the qualifications above set forth.

And the grand jurors, aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place and as a part of the aforesaid conspiracy, combination, confederation and agreement the said Oscar Klayer, Charles Hamburger, Joseph Emery, Edgar E. Wise, George Brown, Grant Brown, and Joseph Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, and William Davis, and said other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate, and agree together to injure, oppress, threaten, and
12 intimidate certain citizens of the United States, to wit, each and all of the qualified electors who might actually vote at said election in each of the voting precincts of the said first congressional district, and each and all of the qualified electors, at said election in each of the voting precincts of the State of Ohio and that said qualified electors can not now, and could not ever, all be to the grand jurors identified, each by his individual names and such of said electors as can or could be so identified are too numerous to list by name in this indictment without unreasonably lengthening the same and are so numerous as that it would require an unreasonable prolongation of the investigations of this grand jury to so identify them—in the free exercise and enjoyment of certain rights and priviieges secured to them and each of them by the Constitution and laws of the United States, to wit:

First. The right to have the votes and ballots for presidential electors, United States Senator, and Representative in Congress in said congressional district cast in their respective precincts at said election, confined to the votes and ballots of legal and qualified voters of said precincts.

Second. The right to have the votes and ballots cast and counted at said election in said precincts for presidential electors, United

States Senators, and Representatives in Congress from said congressional district confined to those cast by electors who had not been bribed, and who had not sold their votes.

Third. The right to have each lawful vote and ballot for presidential electors, United States Senator, and Representative in Congress at said election, counted to its full strength, unaffected and unimpaired by the casting of votes in the said precincts by men who have been bribed and accepted money therefor and by the
13 counting of said votes or any thereof.

Fourth. The right to have the election boards in said election precincts accept and receive only lawful votes cast thereat and to make a true, correct, and accurate count and return covering only the lawful votes cast by the qualified voters for presidential electors, United States Senators, and Representatives in Congress from said district by then and there bribing a large number of otherwise qualified voters at said election and promising them in advance of their voting sums of money to vote and cast their ballots in said precincts at said election for presidential electors, United States Senator, and Representative in Congress from said congressional district and by causing the election boards in said precincts to accept and receive said illegal votes and make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return, which men so bribed and purchased included Joseph Emery, Edgar E. Wise, George Brown, Grant Brown, Joseph Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, and William Davis, and other persons whose names are, to the grand jurors, unknown.

That in pursuance of said conspiracy and to effect the object thereof the defendants injured each and all of the qualified electors aforesaid and so planned, bribed, and purchased the votes of otherwise qualified voters at said election, to wit, Joseph Emery, Edgar E. Wise, George Brown, Brant Brown, Joseph Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, and William Davis, and other persons whose names are, to the grand jurors, unknown, and promised and agreed in advance of their voting to pay them money therefor; and caused them to vote and cast their ballots in said precincts for presidential electors, United States Senator, and Representative in Congress from said district, and caused the election boards
14 in said precincts to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

Contrary to the form and statutes of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Second Count—Section 19, Penal Code.—And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that, on the seventh day of November, 1916, a general election was held in the State of Ohio, under the laws thereof and under

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the laws of the United States, for the election, among others, of twenty-four presidential electors and a United States Senator for said State, and of a Representative in the Congress of the United States from the first congressional district of said State, which said congressional district then included a part of Hamilton County in said State.

That at said election James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges, among others, were candidates for presidential electors, and Atlee Pomerene, among others, was a candidate for United States Senator, and Edward H. Brink, among others, was a candidate for Representative in the Congress of the United States from said congressional district.

That each and all of said candidates for presidential electors and for the office of United States Senator, and for the office of Representative in the Congress of the United States, had been, theretofore, regularly and lawfully chosen and nominated to be such candidates at a primary election next preceding said general election and held under the laws of the State of Ohio.

That at the time when each and all of said candidates were so chosen and nominated, and continuously thereafter until and including said seventh day of November, 1916, each and every one thereof was duly qualified under the Constitution and laws of the United States and of the State of Ohio to be a candidate, each for the particular office for which he was chosen and nominated, and likewise duly qualified to hold such office.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that Oscar Klayer, Charles Hamburger, Joseph Emery, Edgar E. Wise, George Brown, Grant Brown, Joseph Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, and William Davis, each late of said Hamilton County and of said congressional district, and being hereinafter referred to together as defendants, continuously and at all times throughout the period of time extending from the first day of October, 1916, to and including said seventh day of November, 1916, at and within said county of Hamilton and at and within said congressional district, and in the Western Division of the Southern District of Ohio, each then and there well knowing all the premises aforesaid, unlawfully and feloniously did conspire, combine, confederate, and agree together, and with other persons to said grand jurors unknown, to injure and oppress certain citizens of said State and of the United States in the free exercise and enjoyment of certain rights and privileges secured to them, respectively, by the Constitution and laws of the

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United States; that is to say, the right and privileges appertaining to said several candidates, and to all the legally qualified voters at said election voting in said congressional district (the latter forming a class of persons not capable of individual designation).

(First), of having none of such legally qualified voters unlawfully or fraudulently prevented from voting in said congressional district at said election for such candidates for presidential electors, Senator, and Representative, as they chose to vote for.

(Second), of having only legal votes cast in said congressional district at said election for any candidate for presidential elector, United States Senator, or Representative in the Congress of the United States, and accepted, received, counted, and returned by the election boards of said county; and

(Third), of having such election determined by votes not influenced by bribery, fraud, or the wrongful use of money;

And that a description of the means and methods whereby said citizens were so to be injured and oppressed in the free exercise and enjoyment of their said rights and privileges by said defendants is as follows, to wit:

Said defendants, in order fraudulently to favor certain other candidates for said offices at said election, to wit, U. G. Denman, Edwin Jones, Max Burgheim, George McG. Morris, Lyburn T. Palmer, David Oldham, Samuel A. Rennolet, Newton P. Foster, John M. Mulford, Jacob W. Byers, Solon O. Richardson, John B. Lindsey, Barton Walters, Albert E. Sartain, Sol. M. Wolf, N. S. Everhard, Charles L. Casey, John A. Fouts, Wilson Bradrick, Avery C. Jones, Edward O. Whitney, Edward W. Horn, Harry L. Vail, and W. W. Hall, as candidates for presidential electors; Myron T. Herrick, as candidate for United States Senator; and Nicholas Longworth, as candidate for Representative in the Congress of the United States, and to secure the election of such other candidates, instead of the election of the candidate hereinbefore first named, without regard to the true preferences and choice of said legally qualified voters of said congressional district, unlawfully were to prevent, by force, intimidation, and fraud, to be used and practiced upon them by said defendants, as many of said legally qualified voters of said congressional district who were desirous of voting for the candidates first above mentioned, from voting at said election for those candidates, as said defendants could prevent by those means; and were to procure, by bribery, payment, and promise in advance of or at said election, of payment of money to them for so doing, others of said legally qualified voters desirous of voting for the candidates first above named, to vote at said election for said other candidates instead of said candidates first above named, and thereby procure the acceptance, receipt, counting, and returning in due course by said election boards of said congressional district of such illegal votes and of such votes so influenced by bribery, fraud, and improper use of money, as aforesaid.

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And so the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do say, that said Oscar Klayer, Charles Hamburger, Joseph Emery, Edgar E. Wise, George Brown, Grant Brown, Joseph Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, and William Davis, throughout the period of time, at the place, and in manner and form aforesaid, unlawfully and feloniously did conspire to injure and oppress citizens in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States.

Against the peace and dignity of the United States of America, and contrary to the form of the statutes in such case made and provided.

Third Count—Section 37, Penal Code.—The grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further
18 charge and present that, Oscar Klayer, Charles Hamburger, Joseph Emery, Edgar E. Wise, George Brown, Grant Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turney and William Davis, together with other persons whose names are to the grand jurors unknown, continuously and at all times throughout the period of time extending from the first day of October, 1916, to and including the seventh day of November, 1916, in Hamilton County, within the State of Ohio, and within the Western Division of the Southern District of Ohio, and within the jurisdiction of the above-entitled court, did feloniously conspire, combine, confederate and agree together, and with other persons whose names are to the grand jurors unknown, to defraud the United States of America in the manner and for the purpose as follows: By perverting—

First, by perverting and obstructing, and corruptly administering and procuring to be corruptly administered and maladministrating, and causing to be maladministrated, and by committing and causing to be committed, wilful frauds upon each of the following sections of the Constitution of the United States, and upon each of the following laws of the United States, to wit:

(a) Article 2, section 1, of the Constitution of the United States, providing for the election of the President and Vice President of the United States;

(b) Twelfth amendment to said Constitution providing for the election of the President and Vice President of the United States;

(c) The seventeenth amendment to said Constitution providing for the election of Senators by direct vote;

(d) Article 1, section 2 of said Constitution providing for the election of Representatives in the Congress of the United States of America;

(e) Article 1, section 4 of said Constitution providing for
19 the time, place, and manner of holding elections for Senators and Representatives of the United States;

(f) An act of the Congress of the United States, entitled "An act providing a temporary method of conducting the nomination and election of United States Senators," approved June 4th, 1914.

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Second, by denying to and preventing the enjoyment by the United States of America of certain governmental rights and functions to it then and there belonging, namely:

(a) The right and function to have the election of candidates for presidential electors, United States Senators, and Representatives in the Congress of the United States of America determined by the votes of voters who have not been bribed.

(b) The right and function to have the election boards accept, receive, count, and return the legal and only the legal votes cast by qualified voters for presidential electors, United States Senators, and Representatives in the Congress of the United States.

(c) The right and function to have all qualified voters vote for presidential electors, United States Senators without unlawful interference and without intimidation.

Third, by obtaining from the governor of the State of Ohio a certificate of election, sealed with the seal of and attested by the secretary of state of said State, certifying that at the general election held on Tuesday, November 7th, A. D. nineteen hundred and sixteen, at which presidential electors and a United States Senator for the State of Ohio and a Representative in the Congress of the United States for the first congressional district of the State of Ohio, were voted for, chosen and elected, one Nicholas Longworth, whom they intended as a part of said conspiracy to elect by fraud and illegality, and contrary to the laws of said State of Ohio, and the Constitution and laws of the United States, in the manner hereinafter set out, was regularly elected a Representative in the Congress of the United States from the first congressional district in said State at said election and in accordance with the laws of said State and the Constitution and laws of the United States of America; and by causing said Nicholas Longworth to present said certificate of election to the House of Representatives of the United States of America, and to the clerk of the last preceding House of Representatives of the United States of America before the first meeting of the Sixty-fourth Congress of the United States in order that said Nicholas Longworth should have his name placed on the roll of the Representatives-elect in said body.

Fourth, by forcing upon the United States of America and upon the House of Representatives of the Congress thereof, as a duly elected member of said House of Representatives, the said Nicholas Longworth, and thereby securing for him, the said Nicholas Longworth, the privileges, immunities, and emoluments of a Member of said House of Representatives, including the statutory pay of seventy-five hundred dollars per annum, provided by the law as the compensation for the yearly service of any duly elected Member of said House of Representatives.

Fifth, by voting and causing to be voted for candidate for presidential electors, and for candidates for United States Senators, and for a candidate for Representative in Congress at said election, in the various election precincts of the first congressional district of

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Hamilton County, in said State of Ohio, a large number of persons to be thereafter chosen by said defendants, who did not or would not then have or possess the qualifications for electors required by the seventeenth amendment and by article one, section 2 of the Constitution of the United States of America and by the laws of the State of Ohio, governing the qualifications of electors at said election, with full knowledge upon the part of said defendant, and each
21 of them, that persons so to be voted and caused to be voted as aforesaid, did not and would not then have or possess the requisite qualifications for electors at said election.

Sixth, by corruptly purchasing and debauching said election by bribing and buying any men they, the said defendants, could bribe and buy, which said men so to be bought, bribed and purchased were to be chosen and selected by said defendants in the various precincts of the first congressional district of said Hamilton County and by procuring said men to sell their votes therein for presidential electors, United States Senator, and said Representative in Congress, and by causing such men, when so bought, bribed and purchased, to vote in said county for presidential electors, United States Senator, and said Representative in Congress.

Seventh, by causing the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect and inaccurate return of the votes cast therein, by including said illegal votes in said count and return.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that afterward, to wit, on the seventh day of November, in the year of our Lord, one thousand nine hundred and sixteen, in pursuance of and in furtherance of and execution of and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation and agreement aforesaid, said Oscar Klayer procured the said defendant, Edgar E. Wise, a registered voter in precinct B of the eighteenth ward of the city of Cincinnati and in the first congressional district of Ohio to vote the straight Republican ticket at said election and then and there and at the same time instructed the said Edgar E. Wise, how to mark his ballot to vote said Republican ticket; and that the said defendant, Oscar Klayer, then and
22 there and at the time time instructed and promised the said defendant, Edgar E. Wise, that after he had voted in accordance with said instructions he would be paid money therefore; that pursuant to said instructions and agreement and in furtherance of said conspiracy said defendant, Edgar E. Wise, marked his ballot so as to vote the straight Republican ticket and so cast the same; and after having cast the said ballot and in further pursuance of said instructions and agreement and to effect the object of said conspiracy and immediately after he had voted in accordance with said instructions and agreement the said Edgar E. Wise, met the said defendant, Oscar Klayer, in close proximity to the voting place in said ward and precinct and then and there in accordance with said agreement and

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in furtherance of said conspiracy and to effect the object thereof the said Oscar Klayer paid the said defendant, Edgar E. Wise, the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that afterward, to wit, on the seventh day of November, in the year of our Lord, one thousand nine hundred and sixteen, in pursuance of and in furtherance of and in execution of and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation and agreement aforesaid, said Oscar Klayer procured the said defendant, Lemuel Waters, a registered voter in precinct B of the eighteenth ward of the city of Cincinnati and in the first congressional district of Ohio to vote the straight Republican ticket at said election and then and there and at the same time instructed the said Lemuel Waters how to mark his ballot to vote said Republican ticket; and that the said defendant, Oscar Klayer, then and there and at the same time instructed and provised the said defendant, Lemuel
23 Waters that after he had voted in accordance with said instructions he would be paid money therefor; that pursuant to said instructions and agreement and in furtherance of said conspiracy said defendant, Lemuel Waters, marked his ballot so as to vote the straight Republican ticket and so cast the same; and after having cast the said ballot and in further pursuance of said instructions and agreement and to effect the object of said conspiracy and immediately after he had voted in accordance with said instructions and agreement, the said Lemuel Waters, met the said defendant, Charles Hamburger, in close proximity to the voting place in said ward and precinct and then and there in accordance with said agreement and in furtherance said conspiracy and to effect the object thereof the said Charles Hamburger paid the said defendant, Lemuel Waters, the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that afterward, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of and in furtherance of and in execution of and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation, and agreement aforesaid, said Charles Hamburger procured the said defendant, George Brown, a registered voter in precinct B of the eighteenth ward of the city of Cincinnati and in the first congressional district of Ohio to vote the straight Republican ticket at said election, and then and there and at the same time instructed the said George Brown how to mark his ballot to vote said Republican ticket; and that the said defendant, Charles Hamburger, then and there and at the same time instructed and promised the said defendant, George Brown, that after he had voted in accordance with said instructions he would be paid money therefor; that pursuant to said instructions and agreement and in furtherance

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24 of said conspiracy said defendant, George Brown marked his ballot so as to vote the straight Republican ticket and so cast the same; and after having cast the said ballot and in further pursuance of said instructions and agreement and to effect the object of said conspiracy and immediately after he had voted in accordance with said instructions and agreement, the said Oscar Klayer met the said George Brown, defendant, in close proximity to the voting place in said ward and precinct and then and there in accordance with said agreement and in furtherance of said conspiracy and to effect the object thereof the said Oscar Klayer paid the said defendant, George Brown, the sum of one dollar.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

STUART R. BOLIN,
United States Attorney.

(Endorsement:) Indictment. Violations of secs. 19 and 37, Penal Code. A true bill, J. L. Clark, foreman.

25 And afterwards, to wit, on the 22nd day of May, A. D. 1917, came the defendants, Oscar Klayer and Chas. Hamburger, by their attorneys, and filed in the clerk's office of the court aforesaid a certain demurrer in this cause, which said demurrer is clothed in the words and figures following, to wit:

Demurrer.

In the District Court of the United States of America for the Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
OSCAR KLAYER AND CHAS. HAMBURGER, DEFENDANTS. } No. 1140.

Demurrer of Oscar Klayer and Chas. Hamburger to the indictment.

Now come the defendants, Oscar Klayer and Chas. Hamburger, and demur to the indictment herein and to each and every count thereof, for the reason that the said indictment and the several counts thereof do not state facts sufficient to charge offenses against the laws of the United States of America.

Defendants further demur to each of the several counts hereof by reason of defects apparent therein, the particulars of said defects in said counts being as follows, to wit:

First and second counts.

Defendants demur to the first and second counts of said indictment for the reason that the same do not state facts sufficient to charge an

offense against the laws of the United States of America in the following particulars, to wit:

First. Because it appears from the allegations of said counts
26 that the various rights and privileges therein set forth alleged to be the rights and privileges of James E. Campbell and other alleged candidates for presidential electors, Atlee Pomerene, alleged candidate for the Senate of the United States from the State of Ohio, Edward Brink, alleged candidate for Member of the House of Representatives of the United States from the State of Ohio, and all of the qualified electors in each of the voting precincts of the first congressional district of the State of Ohio and each and all of the qualified electors in each of the voting precincts of the State of Ohio, are not secured to them or either of them by the Constitution or laws of the United States.

Second. Because it does not appear from the allegations of said counts that James E. Campbell and other alleged candidates for presidential electors, Atlee Pomerene, alleged candidate for Senator of the United States from the State of Ohio, Edward Brink, alleged candidate for Member of the House of Representatives of the United States from the State of Ohio, and all of the qualified electors in each of the voting precincts of the first congressional district of the State of Ohio, and each and all of the qualified electors in each of the voting precincts of the State of Ohio could have been injured, oppressed, threatened or intimidated in the free exercise and enjoyment of any right or privilege secured to them or either of them by the Constitution or laws of the United States by reason of said alleged conspiracy.

Third. Because said counts fail to set forth any offense committed against the laws of the United States, but the offense sought to be alleged therein, if any is so described, was an offense against the laws of the State of Ohio.

Fourth. Because the said counts and each of them show that this court has no jurisdiction to try and punish the alleged offenses therein described.

27 Fifth. Because, in other particulars, said counts and each of them, fail to describe any offense against the laws of the United States.

Third count.

Defendants demur to the third count of said indictment for the reason that the same does not state facts sufficient to charge an offense against the laws of the United States of America in the following particulars, to wit:

First. Because the allegations of said count do not describe a conspiracy either to commit an offense punishable by the laws of the United States or to defraud the United States in any manner or for any purpose.

Second. Because the offense therein set forth, if the same be an offense, is not an offense against the United States, but against the State of Ohio.

Third. Because the United States can not be defrauded in any manner or for any purpose by the alleged conspiracy of the defendants as set forth in said count.

Fourth. Because the United States can not be defrauded in any manner or for any purpose by any of the alleged purposes of the defendants alleged to have been the results sought to be attained by said alleged conspiracy.

Fifth. Because the alleged overt acts described in said counts could not in any manner or for any purpose defraud or tend to defraud the United States.

Sixth. Because in other particulars said count fails to describe any offense against the laws of the United States.

SHERMAN T. MCPHERSON,
JOHN R. HOLMES,
FROOME MORRIS,
M. MULLER,
Attorneys for Defendants.

28 And afterwards, to wit, on the 22nd day of May, A. D. 1917, an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figures following, to wit:

Entry—12–333.

District Court of the United States of America, Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
OSCAR KLAYER AND CHAS. HAMBURGER, DEFENDANTS. } Entry.

This day this cause came on to be heard on the indictment and the demurrer thereto, and being argued by counsel, and the court being fully advised in the premises, finds it has no jurisdiction of the matters and things charged in said indictment, and it is therefore ordered, adjudged, and decreed that said demurrer be and it is hereby sustained, and the defendants, and each of them, be and they are hereby discharged from further attendance upon this court, to all of which the United States by its counsel excepts.

HOLLISTER, *Judge.*

And afterwards, to wit, on the 19th day of June, A. D. 1917, the following petition for writ of error was filed in the clerk's office of said court:

Petition for writ of error.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, plaintiff, *v.* OSCAR KLAYER, CHARLES HAMBURGER, Joseph Emery, Edgar Wise, George Brown, Grant Brown, James Guiten, Lemuel Watters, William Turney, Leroy Turner, and William Davis, defendants.	Petition for writ of error.

29 Now comes the United States of America, plaintiff herein, and says that on or about the twenty-second day of May, 1917, this court entered a judgment herein against the plaintiff and in favor of the defendants, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignments of error which is filed with this petition.

Wherefore the United States of America, plaintiff herein, prays that a writ of error may issue in its behalf to the Supreme Court of the United States for the correction of the errors so complained of and that a transcript of the record of the proceedings and papers in this cause duly authenticated may be sent to the said Supreme Court of the United States.

STUART R. BOLIN,
United States Attorney for the Southern District of Ohio.
JAMES R. CLARK,
Assistant U. S. Attorney for the Southern District of Ohio.

And afterwards, to wit, on the 19th day of June, A. D. 1917, the following assignment of errors was filed in the clerk's office of said court:

Assignment of errors.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF, *v.* OSCAR KLAYER, CHARLES HAMBURGER, Joseph Emery, Edgar Wise, George Brown, Grant Brown, James Guiten, Lemuel Watters, William Turney, Leroy Turner, and William Davis, defendants.	No. 1140. Assignment of errors.

The plaintiff in this action, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers were committed upon the trial of this cause, to wit:

30 I. The court erred in its decision and judgment sustaining the demurrer to the indictment and each count thereof.

II. (a) The court erred in its decision and judgment sustaining the demurrer to the first count of said indictment.

(b) The court erred in its decision and judgment sustaining the demurrer to the second count of said indictment.

III. (a) The court erred in its construction of the statute upon which the first count of said indictment was based; and

The court further erred in its application of said erroneous construction of said statute to the facts alleged in said first count of said indictment.

(b) The court erred in its construction of the statute upon which the second count of said indictment was based; and

The court further erred in its application of said erroneous construction of said statute to the facts alleged in said second count of said indictment.

IV. (a) The court erred in its decision and judgment in not overruling the demurrer to the first count of said indictment.

(b) The court erred in its decision and judgment in not overruling the demurrer to the second count of said indictment.

V. The court erred in its decision and judgment in not overruling the demurrer to said indictment and to each count thereof.

For these reasons the plaintiff, the United States of America, asks that this case be reviewed, and that such judgment be rendered in the Supreme Court of the United States as should have been rendered in the court below, and that such action be taken as will pro-

31 tect the rights of the plaintiff in the premises.

STUART R. BOLIN,
United States Attorney for the Southern District of Ohio.
JAMES R. CLARK,
Assistant U. S. Attorney for the Southern District of Ohio.

And afterwards, to-wit, on the 19th day of June, A. D. 1917, an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figures following, to-wit:

Entry—12–355.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
v.
OSCAR KLAYER, CHARLES HAMBURGER, JOSEPH Emery, Edgar Wise, George Brown, Grant Brown, James Guiten, Lemuel Watters, William Turney, Leroy Turner, and William Davis, defendants. } Entry. No. 1140.

Now comes the United States attorney on behalf of the plaintiff and presents for allowance a petition for a writ of error and assign-

ments or error accompanying same, upon consideration of which the court hereby allows said petition and orders a writ of error to the Supreme Court of the United States.

HOLLISTER,
United States District Judge, S. D. O.

32 And afterwards, to-wit, on the 27th day of June, A. D. 1917, the following stipulation was filed in the clerk's office of said court:

Stipulation.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
OSCAR KLAYER, CHARLES HAMBURGER, JOSEPH Emery, Edgar Wise, George Brown, Grant Brown, James Guiten, Lemuel Watters, William Turney, Leroy Turner, and William Davis, defendants. } No. 1140. Stipulation.

It is hereby agreed and stipulated that the record in this cause, so far as the undersigned are concerned, shall consist of the following: Indictment, demurrer to indictment, opinion of court on demurrer, order sustaining demurrer, petition for writ of error, assignments of error and order allowing writ.

The clerk is therefore requested to prepare a transcript of the foregoing pleadings and papers to be filed in the Supreme Court of the United States.

THE UNITED STATES OF AMERICA,
By STUART R. BOLIN,
United States Attorney.
Per JAMES R. CLARK,
Assistant U. S. Attorney.
OSCAR KLAYER and CHARLES HAMBURGER,
By JOHN R. HOLMES,
SHERMAN T. MCPHERSON,
FROOME MORRIS,
M. MULLER,
Their Attorneys.
LEMUEL WATERS & LEROY TURNER,
By A. LEE BEATY,
Their Atty.

* * * * * * *

52 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the District Court of the United States for the Southern District of Ohio, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, or some of you, between the United States of America, plaintiff, and Oscar Klayer, Charles Hamburger, Joseph Emery, Edgar Wise, George Brown, Grant Brown, James Guiten, Lemuel Watters, William Turney, Leroy Turner, and William Davis, defendants, a manifest error hath happened, to the great damage of the said the United States of America as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the honorable Edward D. White, Chief Justice of the United States, the 19th day of June, in the year of our Lord one thousand nine hundred and seventeen.

[SEAL.] B. E. DILLEY,
Clerk of the District Court of the United States for the Southern District of Ohio.
By HARRY F. RABE, *Deputy.*

Allowed by—
H. C. HOLLISTER,
Judge of the District Court of the United States for the Southern District of Ohio.

(Indorsed:) Filed Jun. 19, 1917. B. E. Dilley, clerk.

53 UNITED STATES OF AMERICA, *ss:*

To Oscar Klayer, Charles Hamburger, Joseph Emery, Edgar Wise, George Brown, Grant Brown, James Guiten, Lemuel Watters, William Turney, Leroy Turner, and William Davis, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the District Court of the United States for the Southern District of Ohio, Western Division, wherein the United States of America is plaintiff in error and you are defendants in error, to

show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 19th day of June, in the year of our Lord one thousand nine hundred and seventeen.

H. C. HOLLISTER,
District Judge of the United States
for the Southern District of Ohio.

54 On this 11th day of July, in the year of our Lord one thousand nine hundred and seventeen, personally appeared John F. Burns, deputy U. S. marshal, before me, the subscriber, Stephen H. Waters, notary public, Hamilton County, Ohio, and makes oath that he delivered a true copy of the within citation to Edgar Wise, Grant Brown, George Brown.

M. DEVANNEY,
U. S. Marshal, S. D. O.,
By JOHN F. BURNS, *Deputy.*

Sworn to and subscribed the 11th day of July, A. D. 1917.

[SEAL.] STEPHEN H. WATERS,
Notary Public, Hamilton County, Ohio.

CIN'TI., O., *June 23, 1917.*

We acknowledge service on the within citation as to Oscar Klayer, Charles Hamberger.

JOHN R. HOLMES,
SHERMAN F. MCPHERSON,
FROOME MORRIS,
M. MULLER,
Attys. for defendants above named.

(Indorsed:) Marshal's criminal docket No. 554. Rec'd July 7-17.

I acknowledge service on the within citation as to Lemuel Watters and Leroy Turner.

A. LEE BEATY,
Att'y for Defendants Above Named.

Marshal's fees: 3 services, $6.00.

55 (Indorsed:) No. ——, United States District Court, Southern District of Ohio, Western Division.

(Indorsement on cover:) File No. 26046, S. Ohio D. C. U. S. Term No. 579. The United States of America, plaintiff in error, vs. Oscar Klayer, Charles Hamburger, Joseph Emery et al. Filed July 19th, 1917. File No. 26046.

○

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 580.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

ROBERT URICHO, JOHN RYAN, FRANK REESE, ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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1 Supreme Court of the United States.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
ROBERT URICHO, JOHN RYAN, FRANK REESE, EMMETT Tiemeyer, Charles Teague, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, James Kerr, William Miller, Luke Hill, Sam Sallee, Joseph C. Patschell, Charles W. Hayden, Joseph Miller, Joseph Austin, Rufus Southers, John Weber, Henry McManus, George E. Webb, William Brown, George Orth, and John Goldenstedte, defendants in error. } No. ——.

Transcript.

Error to the District Court of the United States for the Western Division of the Southern District of Ohio.

STUART R. BOLIN, Columbus, O.,
U. S. Attorney, S. D. O.
JAMES R. CLARK, Cincinnati, O.,
Asst. U. S. Attorney, S. D. O.
Attorneys for Plaintiff in Error.
JOHN R. HOLMES, Cincinnati, O.,
SHERMAN T. MCPHERSON, Cincinnati, O.,
FROOME MORRIS, Cincinnati, O.,
M. MULLER, Cincinnati, O.,
A. LEE BEATY, Cincinnati, O.,
Attorneys for certain Defendants in Error.

(Indorsed:) Office of the Clerk, Supreme Court U. S. Received July 19, 1917.

2 No. 1141.

UNITED STATES DISTRICT COURT,
Southern District of Ohio,
Western Division. } *ss.*

In the District Court of the United States within and for the district and division aforesaid. Present: The Honorable Howard C.

Hollister, Judge. Among the proceedings had were the following, to wit:

THE UNITED STATES OF AMERICA, *vs.* ROBERT URICHO, JOHN RYAN, FRANK REESE, Emmett Tiemeyer, Charles Teague, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, James Kerr, William Miller, Luke Hill, Sam Sallee, Joseph C. Patschell, Charles W. Hayden, Joseph Miller, Joseph Austin, Rufus Southers, John Weber, Henry McManus, George E. Webb, William Brown, George Orth, and John Goldenstedte.	Indictment. No. 1141.

Be it remembered that, to wit, on the twenty-fifth day of January, in the year of our Lord one thousand nine hundred and seventeen, came to the grand jurors of the United States of America, within and for the Western Division of the Southern District of Ohio, and presented to the court their certain bill of indictment herein, which said bill of indictment is clothed in the words and figures following, to wit:

3 In the District Court of the United States of America for the Southern District of Ohio, Western Division. No. 1141, of the October term in the year nineteen hundred and sixteen.

SOUTHERN DISTRICT OF OHIO,
Western Division, ss:

Count one—section 19, Penal Code.

The grand jurors for the United States of America, empaneled and sworn in the District Court of the United States for the Western Division of the Southern District of Ohio, at the October term thereof, in the year nineteen hundred and sixteen and inquiring for that division and district, upon their oaths and affirmations, charge and present, that:

Robert Uricho, John Ryan, Frank Reese, Emmett Tiemeyer, Charles Teague, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, James Kerr, William Miller, Luke Hill, Sam Sallee, Joseph C. Patschell, Charles W. Hayden, Joseph Miller, Joseph Austin, Rufus Southers, John Weber, Henry McManus, George E. Webb, William Brown, George Orth, and John Goldenstedte, together with other persons whose names are to the grand jurors unknown, throughout the period of time from October first, nineteen hundred and sixteen, to and including November seventh, nineteen hundred and sixteen, in Hamilton County, within the State of Ohio, and within the

western division of the southern district of said State of Ohio, and within the jurisdiction of the above-entitled court, did feloniously conspire, combine, confederate, and agree together, and with other persons whose names are to the grand jurors unknown, to in-
4 jure, oppress, threaten and intimidate certain citizens of the United States, to wit:

James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges, and each of them, in the free exercise and enjoyment of certain rights and privileges secured to them and each of them by the Constitution and laws of the United States, to wit:

First, of being candidates for presidential electors from the State of Ohio, at a general election which was to be, and in fact was, held in the State of Ohio, and in the first congressional district thereof, on said seventh day of November, at which time presidential electors for the State of Ohio were to be, and in fact were, voted for, chosen, and elected, and at which time a United States Senator for the State of Ohio was to be, and in fact was, voted for, chosen, and elected, and at which time a Representative in the Congress of the United States of America, in said first congressional district of Ohio, was to be, and in fact was, voted for, chosen, and elected.

Second, of having qualified voters appear at the polls and vote at said election for presidential electors.

Third, of having only qualified voters vote at said election for presidential electors.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for presidential electors.

Fifth, of having their election or rejection decided and determined by voters who had not been bribed, and by votes which had not been purchased.

5 Sixth, of having each of the precinct election boards at said election make a true, correct, and accurate count and return of the legal and only the legal votes cast by qualified voters for presidential electors:

First, by then and there bribing a large number of otherwise qualified voters at said election and promising them in advance of their voting, sums of money to vote against said presidential electors, and each of them, and to vote in favor of opponents of said presidential electors and by causing the said voters so bribed and promised, as aforesaid, to purposely and intentionally place and caused to be placed, each, respectively, his said vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Charles Teague, Roy R. Yakey, William Troy, Joseph Rinck, Lewis

W. Hambo, William Miller, Luke Hill, Sam Sallee, Joseph C. Patschell, Charles W. Hayden, Joseph Miller, Joseph Austin, Rufus Southers, John Weber, Henry McManus, George E. Webb, William Brown, George Orth, and John Goldenstedte, and other persons whose names are, as aforesaid, to the grand jurors unknown.

Second, and also by causing each of said precinct election boards to accept and receive said illegal votes, and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

That in pursuance of said conspiracy, and to effect the object thereof, the defendants injured the said James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace,
D. F. Dunlavy, John Krause, William F. Thompson and
6 George Hodges and bribed a large number of otherwise qualified voters, and caused the said illegal and wrongful votes of William Brown, George Orth, John Goldenstedte, Charles Teague, Roy R. Yakey, Luke Hill, Sam Sallee, Joseph C. Patschell, Charles W. Hayden, William Troy, Joseph Rinck, Lewis W. Hambo, William Miller, Joseph Miller, Joseph Austin, Rufus Southers, John Weber, Henry McManus, George E. Webb, and other persons whose names are to the grand jurors unknown, to be cast and counted at said election, and caused the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in said count and return.

That the said James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges were candidates for presidential electors at said election, and their names appeared upon the ballots to be voted thereat; that neither was a Senator or Representative, or person holding office of trust or profit under the United States on said day or at any time within two years immediately prior thereto; that neither had ever engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that each was at said time, and had been for more than five years immediately prior thereto, a bona fide resident of the State of Ohio; that each on said day was twenty-five years old or upwards, and was at said time a male citizen of the United States,
and each was a resident voter of a ward and precinct within
7 the State of Ohio, in which wards and precincts they had re-

spectively resided for more than thirty days immediately prior to said election; that each was a qualified voter and entitled to vote at said election; that each possessed all the qualifications required by law for presidential electors, including the qualifications above set out; that the name of each appeared upon the ballot to be voted for at said election;

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation, and agreement, the said Robert Uricho, William Brown, George Orth, John Goldenstedte, Luke Hill, Sam Sallee, Joseph C. Patschell, John Ryan, Frank Reese, Emmett Tiemeyer, Charles Teague, Charles W. Hayden, Joseph Miller, Joseph Austin, Rufus Southers, John Weber, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, Henry McManus, George E. Webb, James Kerr, and William Miller, and other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate, and agree together to injure, oppress, threaten, and intimidate a certain citizen of the United States, to wit: Atlee Pomerene, in the free exercise and enjoyment of certain rights and privileges secured to him by the Constitution and laws of the United States, to wit:

First, of being a candidate for United States Senator from the State of Ohio at said election.

Second, of having qualified electors appear at the polls and vote at said election for United States Senator.

Third, of having only qualified voters vote at said election for United States Senator.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for United States Senator.

8 Fifth, of having his election or rejection decided and determined by voters who had not been bribed, and by votes which had not been purchased.

Sixth, of having each of the precinct election boards at said election make a true, correct, and accurate count and return of the legal, and only the legal, votes cast by qualified voters for United States Senator.

First, by then and there bribing a large number of otherwise qualified voters at said election and promising in advance of their voting sums of money to vote against the said Atlee Pomerene and to vote for an opponent of said Atlee Pomerene, and by causing the said voters so bribed and promised as aforesaid to purposely and intentionally place and caused to be placed, each respectively, his said vote in the ballot box at said election, which said voters so agreed to be purchased and bought were William Brown, George Orth, John Goldenstedte, Charles Teague, Luke Hill, Sam Sallee, Joseph C. Patschell, Charles W. Hayden, Joseph Miller, Joseph Austin, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, Rufus Southers, John Weber, Henry McManus, George E. Webb, William

Miller, and other persons whose names are to the grand jurors unknown; and also

Second, by causing each of said precinct election boards to accept and receive said illegal votes, and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

That in pursuance of said conspiracy, and to effect the object thereof, the defendants feloniously injured the said Atlee Pomerene, and bribed a large number of otherwise qualified voters and caused the said illegal and wrongful votes of Henry McManus, William Brown, George Orth, John Goldenstedte, Luke Hill, Sam Sallee,
9 Charles Teague, Roy R. Yakey, William Troy, Joseph Rinck, John Weber, Joseph C. Patschell, Charles W. Hayden, Joseph Miller, Joseph Austin, Rufus Southers, George E. Webb, Lewis W. Hambo, and William Miller, and other persons whose names are to the grand jurors unknown, to be cast and counted at said election, and caused the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election, by including said illegal votes in said count and return.

That the said Atlee Pomerene was a candidate for United States Senator from the State of Ohio at said election; that his name appeared upon the ballots to be voted for at said election for said office.

That on said day the said Atlee Pomerene was more than thirty years of age, and was, and for more than nine years last past had been, a citizen of the United States and a resident and inhabitant of the State of Ohio and of the city of Canton, in the county of Stark, and of the second ward of said city, and that he was then and theretofore duly registered and entitled to vote therein according to the requirements of law; that he had never engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; and that he possessed all the qualifications required by law for United States Senator, including the qualifications above set forth.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation, and agreement the said Henry McManus, William Brown, Robert Uricho, George Orth, John Goldenstedte, Luke Hill, Sam Sallee, John Weber, Joseph C. Patschell, John Ryan, Frank Reese, Emmett Tiemeyer, Charles Teague, Charles W. Hayden,
10 Joseph Miller, Joseph Austin, Rufus Southers, George E. Webb, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, James Kerr, and William Miller, and said other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate, and agree together to injure, oppress, threaten, and intimidate a certain citizen of the United States, to

wit, Edward H. Brink, in the free exercise and enjoyment of rights and privileges secured to him by the Constitution and laws of the United States, to wit:

First, of being a candidate for Representative in Congress for the first congressional district of the State of Ohio at said election.

Second, of having qualified voters appear at the polls and vote at said election for Representative in Congress from said district.

Third, of having only qualified voters vote at said election for Representative in Congress from said district.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for Representative in Congress from said district.

Fifth, of having his election or rejection decided and determined by voters who had not been bribed and by votes which had not been purchased.

Sixth, of having each of the precinct election boards at said election make a true, correct, and accurate count and return of the legal, and only the legal, votes cast by qualified voters for Representative in Congress in said congressional district.

(First), by then and there bribing a large number of otherwise qualified voters at said election, and promising them in advance of their voting sums of money to vote against the said Edward H. Brink and in favor of an opponent, and by causing the said voters so bribed and promised, as aforesaid, to purposely and intentionally place and cause to be placed, each respectively, his own vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Rufus Southers, Henry McManus, William Brown, George Orth, John Goldenstedte, Luke Hill, Charles Teague, Roy R. Yakey, William Troy, George E. Webb, Sam Sallee, John Weber, Joseph C. Patschell, Charles W. Hayden, Joseph Miller, Joseph Austin, Joseph Rinck, Lewis W. Hambo, and William Miller, and other persons whose names are to the grand jurors unknown; and also,

Second, by causing each of said precinct election boards to accept and receive illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

That in pursuance of said conspiracy and to effect the object thereof the defendants feloniously injured the said Edward H. Brink, in the manner so planned as aforesaid, and bribed a large number of otherwise qualified voters and caused the said illegal and wrongful votes of Charles Teague, Joseph C. Patschell, Joseph Austin, Rufus Southers, Henry McManus, George Orth, John Goldenstedte, William Brown, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, Luke Hill, Sam Sallee, John Weber, George E. Webb, Charles W. Hayden, Joseph Miller, and William Miller to be cast and counted at said election, and caused the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate

count and return of the votes cast at said election by including said illegal votes in said count and return.

That the said Edward H. Brink was a candidate for a Member of the House of Representatives in the Congress of the United States of America in the first congressional district of the State of Ohio
12 at said election; that his name appeared upon the ballots to be voted for at said election for said office; that on said election day the said Edward H. Brink was more than twenty-five years of age and was, and for more than seven years immediately prior thereto had been, a citizen of the United States and a resident and inhabitant of the State of Ohio and of the city of Norwood, in the county of Hamilton, and of the second ward of said city, and that he was then and theretofore duly registered and entitled to vote therein according to the requirements of law; that he had never been engaged in insurrection or rebellion against the United States or given aid or comfort to the enemies thereof, and he possessed all the other qualifications required by law for a Member of the House of Representatives of the United States of America, including the qualifications above set forth.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation, and agreement the said Robert Uricho, Rufus Southers, Henry McManus, William Brown, George Orth, John Goldenstedte, John Ryan, Frank Reese, Emmett Tiemeyer, Luke Hill, George E. Webb, Sam Sallee, John Weber, Joseph C. Patschell, Charles W. Hayden, Charles Teague, Roy R. Yakey, William Troy, Joseph Rinck, Joseph Miller, Joseph Austin, Lewis W. Hambo, James Kerr, and William Miller, and said other persons whose names are to the grand jurors unknown did feloniously conspire, combine, confederate, and agree together to injure, oppress, threaten, and intimidate certain citizens of the United States, to wit, each and all of the qualified electors who might actually vote at said election in each of the voting precincts of the said first congressional district and each and all of the qualified electors at said election in each of the voting precincts of the
13 State of Ohio, and that said qualified electors can not now, and could not ever, all be to the grand jurors identified each by his individual name, and such of said electors as can or could be so identified, are too numerous to list by name in this indictment without unreasonably lengthening the same and are so numerous as that it would require an unreasonable prolongation of the investigations by this grand jury to so identify them in the free exercise and enjoyment of certain rights and privileges secured to them and each of them by the Constitution and laws of the United States, to wit:

First. The right to have the votes and ballots for presidential electors, United States Senators, and Representatives in Congress in said congressional district cast in their respective precincts at said election, confined to the votes and ballots of legal and qualified voters of said precincts.

Second. The right to have the votes and ballots cast and counted at said election in said precincts for presidential electors, United States Senators, and Representatives in Congress from said congressional district, confined to those cast by electors who had not been bribed and who had not sold their votes.

Third. The right to have each lawful vote and ballot for presidential electors, United States Senators, and Representative in Congress at said election counted to its full strength unaffected and unimpaired by the casting of votes in said precincts by men who had been bribed and accepted money therefor, and by the counting of said votes or any thereof.

Fourth. The right to have the election boards in said election precincts accept and receive only lawful votes cast thereat, and to make a true, correct, and accurate count and return covering only the lawful votes cast by qualified voters for presidential electors, United States Senators, and Representatives in Congress from said
14 district, by then and there bribing a large number of otherwise qualified voters at said election and promising them in advance of their voting sums of money to vote and cast their ballots in said precincts at said election for presidential electors, United States Senator, and Representative in Congress from said congressional district, and by causing the election boards in said precincts to accept and receive said illegal votes and make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return, which men so bribed and purchased included Rufus Southers, Henry McManus, Charles Teague, William Brown, George Orth, John Goldenstedte, Luke Hill, George E. Webb, Sam Sallee, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, John Weber, Joseph C. Patschell, Charles W. Hayden, Joseph Miller, Joseph Austin, and William Miller, and other persons whose names are to the grand jurors unknown.

That in pursuance to said conspiracy, and to effect the object thereof, the defendants injured each and all of the qualified electors aforesaid; and as so planned, bribed and purchased the votes of otherwise qualified voters at said election, to wit, Charles W. Hayden, Joseph Miller, Rufus Southers, Henry McManus, William Brown, George Orth, Charles Teague, Roy R. Yakey, William Troy, Joseph Austin, John Goldenstedte, Luke Hill, George E. Webb, Sam Sallee, John Weber, Joseph C. Patschell, Joseph Rinck, Lewis W. Hambo, William Miller, and other persons whose names are to the grand jurors unknown, and promised and agreed in advance of their voting to pay them money therefor; and caused them to vote and cast their ballots in said precincts for presidential electors, United States Senator, and Representative in Congress from said district, and caused the election boards in said precincts to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

15 Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Second count—Section 19, penal code. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that, on the seventh day of November, 1916, a general election was held in the State of Ohio, under the laws thereof and under the laws of the United States, for the election, among others, of twenty-four presidential electors and a United States Senator, for said State, and of a Representative in the Congress of the United States from the first congressional district of said State, which said congressional district then included a part of Hamilton County in said State.

That at said election James E. Campbell, Judson Harmon Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges, among others, were candidates for presidential electors, and Atlee Pomerene, among others, was a candidate for United States Senator, and Edward H. Brink, among others, was a candidate for Representative in the Congress of the United States from the said congressional district.

That each and all of the said candidates for presidential electors, and for the office of United States Senator, and for the office for Representative in the Congress of the United States, had been theretofore regularly and lawfully chosen and nominated to be such candidates at a primary election next preceding the said general election, and held under the laws of the State of Ohio.

That at the time when each and all of said candidates
16 were so chosen and nominated, and continuously thereafter until and including the said seventh day of November, 1916, each and every one thereof was duly qualified under the Constitution and laws of the United States and of the State of Ohio, to be a candidate, each for the particular office for which he was chosen and nominated, and, likewise, duly qualified to hold such office.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that Robert Uricho, Charles W. Hayden, Joseph Miller, Rufus Southers, Henry McManus, William Brown, John Ryan, Frank Reese, Charles Teague, Roy R. Yakey, George Orth, Joseph Austin, John Goldenstedte, Luke Hill, George E. Webb, Sam Sallee, William Troy, Joseph Rinck, Lewis W. Hambo, James Kerr, Emmett Tiemeyer, John Weber, Joseph C. Patschell, and William Miller, each late of the said Hamilton County and of the said congressional district, and being hereinafter referred to together as defendants, continuously and at all times throughout the period of time extending from the first day of October, 1916, to and including the said seventh day of November, 1916, at and within

the said county of Hamilton, and at and within the said congressional district, in the Western Division of the Southern District of Ohio, each then and there well knowing all the premises aforesaid, unlawfully and feloniously did conspire, combine, confederate, and agree together, and with other persons to the said grand jurors unknown, to injure and oppress certain citizens of the said State and of the United States in the free exercise and enjoyment of certain rights and privileges secured to them, respectively, by the Constitution and laws of the United States; that is to say, the right and privilege appertaining to said several candidates, and to all the legally qualified voters at said election voting in said congressional district (the latter forming a class of persons not capable of individual designation).

17 First, of having none of such legally qualified voters unlawfully or fraudulently prevented from voting in said congressional district at said election for such candidates for presidential electors, United States Senator, and Representative as they chose to vote for.

Second, of having only legal votes cast in said congressional district at said election for any candidate for presidential elector, United States Senator, or Representative in the Congress of the United States, and accepted, received, counted, and returned by the election boards of said county; and

Third, of having such election determined by votes not influenced by bribery, fraud, or the wrongful use of money.

And that a description of the means and methods whereby said citizens were so to be injured and oppressed in the free exercise and enjoyment of their said rights and privileges by the said defendants is as follows, to wit:

Said defendants in order fraudulently to favor certain other candidates for the said offices at said election, to wit, U. G. Danman, Edwin Jones, Max Burgheim, George McG. Morris, Lyburn T. Palmer, David Oldham, Samuel A. Rennolet, Newton P. Foster, John M. Mulford, Jacob W. Byers, Solon O. Richardson, John B. Lindsey, Barton Walters, Albert E. Sartain, Sol. M. Wolf, N. S. Everhard, Charles L. Casey, John A. Fouts, Wilson Bradrick, Avery C. Jones, Edward O. Whitney, Edward W. Horn, Harry L. Vail, and W. W. Hall, as candidates for presidential electors; Myron T. Herrick, as candidate for United States Senator; and Nicholas Longworth, as candidate for Representative in the Congress of the United States, and to secure the election of such other candidates, instead of the election of the candidates hereinbefore first named, without regard to the two preferences and choice of said legally qualified

18 voters of said congressional district, unlawfully were to prevent, by force, intimidation, and fraud, to be used and practiced upon them by said defendants, as many of said legally qualified voters of said congressional district who were desirous of voting for the candidates first above mentioned, from voting at the said election for those candidates, as said defendants could prevent by those

means; and were to procure, by bribery, payment, and promise in advance of or at said election of payment of money to them for so doing, others of said legally qualified voters desirous of voting for the candidates first above mentioned, to vote at said election for said other candidates instead of said candidates first above named, and thereby procure the acceptance, receipt, counting, and returning in due course by said election boards of said congressional district, of such illegal votes and of such votes so influenced by bribery, fraud, and improper use of money, as aforesaid.

And so the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do say, that said Robert Uricho, Charles W. Hayden, Joseph Miller, Rufus Southers, Henry McManus, William Brown, George Orth, Joseph Austin, John Goldenstedte, Luke Hill, John Ryan, Frank Reese, Charles Teague, Roy R. Yakey, William Troy, George E. Webb, Sam Sallee, John Weber, Joseph C. Patschell, Joseph Rinck, Lewis W. Hambo, James Kerr, Emmett Tiemeyer, and William Miller, throughout the period of time, at the place, and in manner and form aforesaid, unlawfully and feloniously did conspire, to injure and oppress citizens in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States;

Against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

19 Third count—Section 37, Penal Code. The grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that Charles W. Hayden, Joseph Miller, Rufus Southers, Robert Uricho, John Ryan, Frank Reese, Henry McManus, William Brown, George Orth, Joseph Austin, Emmett Tiemeyer, Charles Teague, Roy R. Yakey, John Goldenstedte, Luke Hill, George E. Webb, Sam Sallee, John Weber, Joseph C. Patschell, William Troy, Joseph Rinck, Lewis W. Hambo, James Kerr, and William Miller, together with other persons whose names are to the grand jurors unknown, continuously and at all times throughout the period of time extending from the first day of October, 1916, to and including the seventh day of November, 1916, in Hamilton County, within the State of Ohio, and within the western division of the southern district of Ohio, and within the jurisdiction of the above entitled court, did feloniously conspire, combine, confederate, and agree together, and with other persons whose names are to the grand jurors unknown, to defraud the United States of America, in the manner and for the purposes, as follows:

First, by perverting and obstructing, and corruptly administering and procuring to be corruptly administered, and maladministering and causing to be maladministered, and by committing and causing to be committed, wilful frauds upon each of the following sections of the Constitution of the United States, and upon each of the following laws of the United States, to wit:

(a) Article 2, section 1, of the Constitution of the United States, providing for the election of the President and Vice President of the United States.

(b) The twelfth amendment to said Constitution, providing for the election of President and Vice President of the United States.

(c) The seventeenth amendment to said Constitution providing for the election of Senators by direct vote.

(d) Article 1, section 2, of said Constitution, providing for the election of Representatives in the Congress of the United States of America.

(e) Article 1, section 4, of said Constitution, providing for the time, place, and manner of holding elections for Senators and Representatives of the United States.

(f) An act of the Congress of the United States, entitled, "An act providing a temporary method of conducting the nomination and election of United States Senators," approved June 4th, 1914.

Second, by denying to and preventing the enjoyment by the United States of America of certain governmental rights and functions to it then and there belonging, namely:

(a) The right and function to have the election of candidates for presidential electors, United States Senators and Representatives in the Congress of the United States of America, determined by the votes of voters who have not been bribed.

(b) The right and function to have the election boards accept, receive, count, and return the legal, and only the legal, votes cast by qualified voters for presidential electors, United States Senators, and Representatives in the Congress of the United States.

(c) The right and function to have all qualified voters vote for presidential electors, United States Senators and Representatives in the Congress of the United States, without unlawful interference and without intimidation.

Third, by obtaining from the governor of the State of Ohio a certificate of election, sealed with the seal of, and attested by the secretary of State, of said State, certifying that at the general election held on Tuesday, November seventh, A. D. nineteen hundred and sixteen, at which presidential electors and a United States Senator for the State of Ohio and a Representative in the Congress of the United States for the first congressional district of the State of Ohio, were voted for, chosen, and elected, one Nicholas Longworth, whom they intended as a part of said conspiracy to elect by fraud and illegality and contrary to the laws of said State of Ohio, and the Constitution and laws of the United States, in the manner hereinafter set out, was regularly elected a Representative in the Congress of the United States from the first congressional district in said State at said election and in accordance with the laws of said State and the Constitution and laws of the United States of America; and by causing said Nicholas Longworth to present said certificate of election to the House of Repre-

sentatives of the United States of America, and to the clerk of the last preceding House of Representatives of the United States of America, before the first meeting of the Sixty-fourth Congress of the United States, in order that the said Nicholas Longworth should have his name placed on the roll of the Representatives elected in said body.

Fourth, by forcing upon the United States of America and upon the House of Representatives of the Congress thereof, as a duly elected Member of said House of Representatives, the said Nicholas Longworth, and thereby securing for him, the said Nicholas Longworth, the privileges, immunities, and emoluments of a Member of the said House of Representatives, including the statutory pay of seventy-five hundred dollars per annum provided by law as the compensation for the yearly service of any duly elected Member of said House of Representatives.

Fifth, by voting and causing to be voted for candidates for presidential electors, and for candidates for United States Senators, and for a candidate for Representative in Congress at said election, in the various precincts of the first congressional district, Hamilton
22 County, in the said State of Ohio, a large number of persons to be thereafter chosen by the said defendants, who did not or would not then have or possess the qualifications for electors required by the seventeenth amendment, and by Article I, section 2, of the Constitution of the United States of America, and by the laws of the State of Ohio governing the qualifications of electors at said election, with full knowledge upon the part of said defendants, and each of them, that the said persons so to be voted and caused to be voted, as aforesaid, did not and would not then have or possess the requisite qualifications for electors at said election.

Sixth, by corruptly purchasing and debauching the said election by bribing and buying any men they, the said defendants, could bribe and buy, which said men so to be bought, bribed, and purchased were to be chosen and selected by said defendants in the various precincts of the first congressional district of said Hamilton County, and by procuring said men to sell their votes therein for presidential electors, United States Senator, and said Representative in Congress, and by causing such men, when so bought, bribed, and purchased, to vote in said county for presidential electors, United States Senator, and said Representative in Congress.

Seventh, by causing the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate return of the votes cast therein, by including said illegal votes in said count and return.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that, afterwards, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of and in furtherance of, and in execution of, and for the purpose of carrying out and to
23 effect the object, design, and purpose of said conspiracy, com-

bination, confederation, and agreement aforesaid, said John Ryan procured the said defendant, Roy R. Yakey, a registered voter in precinct G of the sixth ward of the city of Cincinnati, and in the first congressional district of Ohio, to vote the straight Republican ticket at said election, and then and there and at the same time instructed the said Roy R. Yakey how to mark his ballot to vote said straight Republican ticket, and instructed him not to fold the said ballot after marking the same; that pursuant to said instructions and agreement, and in furtherance of said conspiracy, said defendant Roy R. Yakey, marked his said ballot so as to vote a straight Republican ticket, and cast the same without having folded said ballot, as required by law; that in further pursuance of said instructions and agreement, and to effect the object of said conspiracy, and immediately after he had voted in accordance with said instructions and agreement, the said Roy R. Yakey met the said defendants, Robert Uricho, Frank Reese, and John Ryan, in close proximity to the voting place in said ward and precinct in which said defendant, Roy R. Yakey, had cast his said ballot, and that in accordance with said agreement and in further pursuance of said conspiracy and to effect the object thereof, said defendant, John Ryan, then and there paid said defendant, Roy R. Yakey, the sum of one dollar.

And the grand jurors aforesaid, upon their affirmations and oaths aforesaid, do further charge and present that, afterward, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of and in furtherance of, and in execution of, and for the purpose of, carrying out and to effect the object, design, and purpose of said conspiracy, combination,
24 confederation, and agreement aforesaid, said defendant, Robert Uricho, procured the said defendant, William Miller, a registered voter in said precinct G of said sixth ward of the city of Cincinnati and in the first congressional district of Ohio, to vote the straight Republican ticket at said election, and then and there and at the same time and by and with the use of a sample ballot to demonstrate the same, instructed and procured the said William Miller to mark his ballot by placing an X in the circle under the design of the eagle on the said ballot and cast the vote of him, the said William Miller, in said ward and precinct in accordance with said procurement and instruction; that the said Robert Uricho then and there and at the same time instructed the said William Miller that after he had voted in accordance with said instructions he would be paid money therefor; that, pursuant to said instructions and agreement and in furtherance of said conspiracy, said defendant, William Miller, marked his ballot by placing an X in the circle under the design of the eagle displayed thereon, and so cast the same; and after having cast his said ballot and in further pursuance of said instructions and agreement and to effect the object of said conspiracy and immediately after he had voted in accordance with said instructions and agreement the said William Miller met the said defendants,

Robert Uricho, Frank Reese, and John Ryan in an alley in close proximity to the voting place in the said ward and precinct and in accordance with said agreement and in furtherance of said conspiracy and to effect the object thereof the said Robert Uricho paid said defendant, William Miller, the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that, afterward, to
25 wit, on the seventh day of November, in the year of our Lord nineteen sixteen, in pursuance of and in furtherance of, and in execution of, and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation, and agreement aforesaid, said defendant, John Ryan, procured the said defendant, Joseph Rinck, a registered voter in the said sixth ward, precinct G, of the city of Cincinnati, and in the first congressional district of Ohio, to vote the straight Republican ticket at said election and then and there and at the same time and by and with the use of a sample ballot to demonstrate the same, instructed and procured the said Joseph Rinck to mark his ballot by placing an X in the circle under the design of the eagle on said ballot and cast the vote of him, the said Joseph Rinck, in the said ward and precinct in accordance with said procurement and instruction; that the said John Ryan then and there and at the same time instructed and promised the said Joseph Rinck that after he had voted in accordance with said instructions he would be paid money therefor; that pursuant to said instructions and agreement and in furtherance of said conspiracy said defendant, Joseph Rinck, marked his ballot by placing an X in the circle under the design of the eagle displayed thereon, and so cast the same and after having cast his said ballot and in further pursuance of said instructions and agreement and to effect the object of the said conspiracy, and immediately after he had voted in accordance with said instructions and agreement the said Joseph Rinck saw the said defendants, John Ryan, Robert Uricho, and Frank Reese in close proximity to the voting place in said ward and precinct and in accordance with said agreement and in furtherance of said conspiracy and to effect the object thereof said Robert Uricho paid said defendant, Joseph Rinck, the sum of one dollar.

26 And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that, afterward, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of and in furtherance of, and in execution of, and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation, and agreement aforesaid, said defendant, Emmett Tiemeyer, procured said defendant, Charles Teague, a registered voter in said sixth ward and precinct G of the city of Cincinnati, and in the first congressional district of Ohio, to vote the straight Republican ticket at the said election, and then and there and at the same time instructed the said Charles Teague how

to mark his ballot to vote the straight Republican ticket, and instructed him not to fold his said ballot after marking the same; that pursuant to said instructions and agreement, and in furtherance of the said conspiracy, said defendant, Charles Teague, marked his said ballot so as to vote the straight Republican ticket, and cast the same without having folded the said ballot as required by law; that in further pursuance of said instructions and agreement, and to effect the object of the said conspiracy, and immediately after he had voted in accordance with said instructions and agreement, the said Charles Teague saw the said defendants Robert Uricho, Frank Reese, and John Ryan in close proximity to the voting place in the said ward and precinct in which the said defendant, Charles Teague, had cast his said ballot, and that in accordance with said agreement, and in further pursuance of said conspiracy, and to effect the object thereof, the said defendant, John Ryan, then and there paid the said defendant, Charles Teague, the sum of one dollar.

27 Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

STUART R. BOLIN,
United States Attorney.

The following endorsement appears on back of above indictment: Indictment. Violations of secs. 19 and 37, Penal Code. A true bill. J. L. Clark, foreman.

28 And afterwards, to-wit, on the 22nd day of May, A. D. 1917, came the defendants, Robert Uricho, John Ryan, Frank Reese, Emmett Tiemeyer, and James Kerr, by their attorneys, and filed in the clerk's office of the court aforesaid a certain demurrer in this cause, which said demurrer is clothed in the words and figures following, to-wit:

Demurrer.

In the District Court of the United States of America for the Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
ROBERT URICHO, ET AL., DEFENDANTS. } No. 1141.

Demurrer of Robert Uricho et al. to the indictment.

Now come the defendants, Robert Uricho, John Ryan, Frank Reese, Emmett Tiemeyer, and James Kerr, and demur to the indictment herein and to each and every count thereof, for the reason that the said indictment and the several counts thereof do not state facts sufficient to charge offenses against the laws of the United States of America.

Defendants further demur to each of the several counts hereof by reason of defects apparent therein, the particulars of said defects in said counts being as follows, to-wit:

First and second counts.

Defendants demur to the first and second counts of said indictment for the reason that the same do not state facts sufficient to charge an offense against the laws of the United States of America in the following particulars, to-wit:

29 First, because it appears from the allegations of said counts that the various rights and privileges therein set forth alleged to be the rights and privileges of James E. Campbell and other alleged candidates for presidential electors, Atlee Pomerene, alleged candidate for Senator of the United States from the State of Ohio, Edward Brink, alleged candidate for Member of the House of Representatives of the United States from the State of Ohio, and all of the qualified electors in each of the voting precincts of the first congressional district of the State of Ohio and each and all of the qualified electors in each of the voting precincts of the State of Ohio, are not secured to them or either of them by the Constitution or laws of the United States.

Second, because it does not appear from the allegations of said counts that James E. Campbell and other alleged candidates for presidential electors, Atlee Pomerene, alleged candidate for Senator of the United States from the State of Ohio, Edward Brink, alleged candidate for Member of the House of Representatives of the United States from the State of Ohio, and all of the qualified electors in each of the voting precincts of the first congressional district of the State of Ohio, and each and all of the qualified electors in each of the voting precincts of the State of Ohio could have been injured, oppressed, threatened, or intimidated in the free exercise and enjoyment of any right or privilege secured to them or either of them by the Constitution or laws of the United States by reason of said alleged conspiracy.

Third, because said counts fail to set forth any offense committed against the laws of the United States, but the offense sought to be alleged therein, if any is so described, was an offense against the laws of the State of Ohio.

30 Fourth, because the said counts and each of them show that this court has no jurisdiction to try and punish the alleged offenses therein described.

Fifth, because in other particulars said counts, and each of them, fail to describe any offense against the laws of the United States.

Third count.

Defendants demur to the third count of said indictment for the reason that the same does not state facts sufficient to charge an offense against the laws of the United States of America in the following particulars, to wit:

First, because the allegations of said count do not describe a conspiracy either to commit an offense punishable by the laws of the United States or to defraud the United States in any manner or for any purpose.

Second, because the offense therein set forth, if the same be an offense, is not an offense against the United States, but against the State of Ohio.

Third, because the United States can not be defrauded in any manner or for any purpose by the alleged conspiracy of the defendants as set forth in said count.

Fourth, because the United States can not be defrauded in any manner or for any purpose by any of the alleged purposes of the defendants alleged to have been the results sought to be attained by said alleged conspiracy.

Fifth, because the alleged overt acts described in said counts could not in any manner or for any purpose defraud or tend to defraud the United States.

Sixth, because in other particulars said count fails to describe any offense against the laws of the United States.

SAMUEL T. MCPHERSON,
JOHN R. HOLMES,
FROOME MORRIS,
M. MULLER,
Attorneys for defendants.

31 And afterwards, to-wit, on the 22nd day of May, A. D. 1917, an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figures following, to wit:

Entry—12-333.

In the District Court of the United States of America for the Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
ROBERT URICHO ET AL., DEFENDANTS.
} Entry. No. 1141.

This day this cause came on to be heard on the indictment and the demurrer thereto, and being argued by counsel, and the court being fully advised in the premises finds it has no jurisdiction of the matters and things charged in said indictment, and it is therefore ordered, adjudged, and decreed that said demurrer be, and it is hereby, sustained, and the defendants and each of them be, and they are hereby, discharged from further attendance upon this court, to all of which the United States by its counsel excepts.

HOLLISTER, *Judge.*

And afterwards, to wit, on the 19th day of June, A. D. 1917, the following petition for writ of error was filed in the clerk's office of said court:

32 Petition for writ of error.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
v.
ROBERT URICHO, JOHN RYAN, FRANK REESE, EMMETT TIEMEYER, Charles Teague, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, James Kerr, William Miller, Luke Hill, Sam Sallee, Joseph C. Patschall, Charles W. Hayden, Joseph Miller, Joseph Austin, Rufus Southers, John Weber, Henry McManus, George E. Webb, William Brown, George Orth, and John Goldenstedte, defendants. } No. 1141.

Petition for writ of error.

Now comes the United States of America, plaintiff herein, and says that on or about the twenty-second day of May, 1917, this court entered a judgment herein against the plaintiff and in favor of the defendants, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignments of error which is filed with this petition.

Wherefore, the United States of America, plaintiff herein, prays that a writ of error may issue in its behalf to the Supreme Court of the United States for the correction of the errors so complained of and that a transcript of the record of the proceedings and papers in this cause duly authenticated may be sent to the said Supreme Court of the United States.

STUART R. BOLIN,
United States Attorney for the Southern District of Ohio.
JAMES R. CLARK,
Assistant U. S. Attorney for the Southern District of Ohio.

33 And afterwards, to wit, on the 19th day of June, A. D. 1917, the following assignment of errors was filed in the clerk's office of said court:

Assignment of errors.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF, *v.* ROBERT URICHO, JOHN RYAN, FRANK REESE, EMMETT TIEMEYER, Charles Teague, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, James Kerr, William Miller, Luke Hill, Sam Sallee, Joseph C. Patschell, Charles W. Hayden, Joseph Miller, Joseph Austin, Rufus Southers, John Weber, Henry McManus, George E. Webb, William Brown, George Orth, and John Goldenstedte, defendants.	No. 1141.

Assignment of errors.

The plaintiff in this action, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers were committed upon the trial of this cause, to wit:

I. The court erred in its decision and judgment sustaining the demurrer to the indictment and each count thereof.

II. (a) The court erred in its decision and judgment sustaining the demurrer to the first count of said indictment.

(b) The court erred in its decision and judgment sustaining the demurrer to the second count of said indictment.

III. (a) The court erred in its construction of the statute upon which the first count of said indictment was based, and

The court further erred in its application of said erroneous construction of said statute to the facts alleged in said first count of said indictment.

(b) The court erred in its construction of the statute upon which the second count of said indictment was based, and

The court further erred in its application of said erroneous construction of said statute to the facts alleged in said second count of said indictment.

IV. (a) The court erred in its decision and judgment in not overruling the demurrer to the first count of said indictment.

(b) The court erred in its decision and judgment in not overruling the demurrer to the second count of said indictment.

V. The court erred in its decision and judgment in not overruling the demurrer to said indictment and to each count thereof.

For these reasons the plaintiff, the United States of America, asks that this case be reviewed, and that such judgment be rendered in the Supreme Court of the United States as should have been rendered

56 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the District Court of the United States for the Southern District of Ohio, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, or some of you, between the United States of America, plaintiff, and Robert Uricho, John Ryan, Frank Reese, Emmett Tiemeyer, Charles Teague, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, James Kerr, William Miller, Luke Hill, Sam Sallee, Joseph C. Patschall, Charles W. Hayden, Joseph Miller, Joseph Austin, Rufus Southers, John Weber, Henry McManus, George E. Webb, William Brown, George Orth, and John Goldenstedte, defendants, a manifest error hath happened, to the great damage of the said the United States of America, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 19th day of June, in the year of our Lord one thousand nine hundred and seventeen.

[SEAL.]

B. E. DILLEY,
Clerk of the District Court of the United States for the Southern District of Ohio.
By HARRY F. RABE, *Deputy.*

Allowed by—
H. C. HOLLISTER,
Judge of the District Court of the United States for the Southern District of Ohio.

57 (Indorsed:) Filed Jun. 19, 1917. B. E. Dilley, Clerk.

58 UNITED STATES OF AMERICA, *ss:*

To Robert Uricho, John Ryan, Frank Reese, Emmett Tiemeyer, Charles Teague, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, James Kerr, William Miller, Luke Hill, Sam Sallee, Joseph C. Patschall, Charles W. Hayden, Joseph Miller, Joseph Austin, Rufus Southers, John Weber, Henry McManus, George E. Webb, William Brown, George Orth, and John Goldenstedte, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the District Court of the United States for the Southern District of Ohio, Western Division, wherein the United States of America is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 19th day of June, in the year of our Lord one thousand nine hundred and seventeen.

H. C. HOLLISTER,
District Judge of the United States
for the Southern District of Ohio.

59 On this 11th day of July, in the year of our Lord one thousand nine hundred and seventeen, personally appeared John F. Burns, deputy U. S. marshal before me, the subscriber, Stephen H. Waters, notary public, Hamilton County, Ohio, and makes oath that he delivered a true copy of the within citation to Roy R. Yakey, Lewis W. Hambo, William Miller, Luke Hill, Joseph C. Patschall, Joseph Austin, John Weber, Henry McManus, George E. Webb, William Brown, Sam Sallee, George Orth, and John Goldstede.

M. DEVANNEY,
U. S. Marshal, S. D. O.
JOHN F. BURNS, *Deputy.*

Sworn to and subscribed the 11th day of July, A. D. 1917.
[SEAL.] STEPHEN H. WATERS,
Notary Public Hamilton County, Ohio.

Cincinnati, Ohio, June 23, 1917.

(Indorsed:) Marshal's criminal docket No. 550. Rec'd July 6, 1917.

We acknowledge service on the within citation as to Robert Uricho, John Ryan, Frank Reese, Emmett Tiemeyer, and James Kerr.

JOHN R. HOLMES,
SHERMAN T. MCPHERSON,
FROOME MORRIS,
M. MULLER,
Attys. for defendants above named.

I acknowledge service on the within citation as to Rufus Southern.

A. LEE BEATY,
Atty. for defendant above named.

Marshal's fees: 18 services, $26.00.

(Indorsement on cover:) File No. 26,047, S. Ohio, D. C. U. S. Term No. 580. The United States of America, plaintiff in error, vs. Robert Uricho, John Ryan, Frank Reese et al. Filed July 19, 1917. File No. 26,047.

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In the Supreme Court of the United States.

OCTOBER TERM, 1917.

THE UNITED STATES, PLAINTIFF IN ERROR, *v.* EDWARD BATHGATE, MATTHEW PEACOCK, John Toker et al.	No. 575.
THE UNITED STATES, PLAINTIFF IN ERROR, *v.* JOHN J. BURCKHAUSER, PHILIP BOEHLER, Al Broskey et al.	No. 576.
THE UNITED STATES, PLAINTIFF IN ERROR, *v.* HARRY COONS, JOHN OTTO, JOSEPH MILLER et al.	No. 577.
THE UNITED STATES, PLAINTIFF IN ERROR, *v.* WILLIAM FARRELL, PETER M. LONG, JOHN Long et al.	No. 578.
THE UNITED STATES, PLAINTIFF IN ERROR, *v.* OSCAR KLAYER, CHARLES HAMBURGER, Joseph Emery et al.	No. 579.
THE UNITED STATES, PLAINTIFF IN ERROR, *v.* ROBERT URICHO, JOHN RYAN, FRANK Reese et al.	No. 580.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

18166—17

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General and respectfully moves the court to advance the above-entitled cases for joint hearing on a day convenient to the court.

These cases grow out of frauds alleged to have been committed at the general election on the 7th day of November, 1916, in the First Congressional District in the State of Ohio. The indictments were returned against the named defendants on the 25th day of January, 1917, charging them, in the first and second counts thereof, with conspiracy in violation of section 19 of the Penal Code; and the third count of said indictments charge the defendants with conspiracy to defraud the United States in violation of section 37 of the Penal Code.

The district court sustained a demurrer to each of the indictments upon the ground that the Federal courts have no jurisdiction of such cases, relying upon the decision of this court in *United States* v. *Gradwell*, 243 U. S. 476.

The various records in these respective cases contain assignments of error which are identical, the contention of the Government being that the district court erred in its decision sustaining the demurrer, and further, that the court erred in its application and construction of sections 19 and 37 of the Penal Code to the facts alleged in the indictments.

In all, there are about ninety-nine defendants in these cases, as well as many persons charged with selling their votes at said general election who have

pleaded guilty of having been bribed. These persons have been temporarily discharged from custody, pending the determination of the respective cases in this court, and they will be apprehended should the decision of the district court sustaining the demurrer to the indictments be reversed. Moreover, the cases are of very great public importance, involving as they do the rights of citizens under the Constitution in instances of frauds at a general election for Federal officers.

Inasmuch as these cases present identical questions for determination, and come from the same district in the United States, it is submitted, if the court deems it advisable, that they should be advanced for hearing to the earliest date practicable, and so joined that they may be disposed of substantially as one cause.

Notice of this motion has been served on opposing counsel in all cases.

JOHN W. DAVIS,
Solicitor General.

OCTOBER, 1917.

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THE UNITED STATES, PLAINTIFF IN ERROR, *v.* ROBERT URICHO, JOHN RYAN, FRANK Reese, et al.	No. 580.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

BRIEF FOR THE UNITED STATES.

STATEMENT.

These cases (six in number) grow out of bribery alleged to have been committed at the Federal election

on the 7th day of November, 1916, in the First Congressional District in the State of Ohio, at which time there were selected and voted for, among others, certain regularly qualified candidates for presidential electors, a United States Senator, and Representative in Congress.

Defendants were indicted on January 25, 1917, in the District Court of the United States for the Southern District of Ohio for violating sections 19 and 37 of the Criminal Code (35 Stat. 1008, 1092, 1096). The indictments are similar and contain three counts, charging the named defendants, in the first and second counts thereof, with conspiring, in violation of section 19 of the Criminal Code, to injure citizens in the enjoyment of constitutional rights; and, in the third count, with a conspiracy to defraud the United States in violation of section 37 of the Criminal Code.

The first count, founded upon section 19, charges in substance: That the defendants did feloniously conspire, combine, confederate, and agree together to injure, oppress, threaten, and intimidate certain citizens of the United States, namely, (1) candidates for presidential electors; (2) a candidate for United States Senator from the State of Ohio; (3) a candidate for Representative in Congress for the First Congressional District of the State of Ohio, and (4) "each and all of the qualified electors who might actually vote at said election, in each of the voting precincts of the said First Congressional District, and each and all of the qualified electors at said election in each and all of the voting precincts of the State of

Ohio," in the free exercise and enjoyment of certain rights and privileges secured to them by the Constitution and laws of the United States, to wit (as to the first, second, and third classes of citizens), (*a*) the right of having only qualified voters vote; (*b*) of having only the votes of qualified voters cast, accepted, counted, and returned at said election; (*c*) of having the election determined by voters who had not been bribed and by votes which had not been purchased, and (*d*) of having the election boards make a true, correct, and accurate count of the legal, and only the legal, votes cast by qualified electors. As to the fourth class of citizens the rights claimed to have been violated are alleged as follows: (*a*) the right to have only legal and qualified voters vote for presidential electors, United States Senator, and Representative in said congressional district; (*b*) the right to have the votes cast and counted confined to those cast by electors who had not been bribed and who had not sold their votes; (*c*) the right to have each lawful vote counted to its full strength unaffected and unimpaired by the casting of votes by men who had been bribed and accepted money therefor, and (*d*) the right to have the election boards accept only lawful votes and make a true, correct, and accurate return thereof. It was further alleged that said unlawful conspiracy was to be and was in fact accomplished by purchasing the votes of certain qualified voters and by causing the election boards to accept and receive said illegal votes and to make

an untrue, incorrect, and inaccurate return by including said bribed votes therein.

The second count, also based on section 19, is largely an epitome of the first count, omitting, however, the allegation of an overt act. There was also a third count in each indictment, charging a conspiracy to violate section 37 of the Criminal Code, the ruling on which may be entirely pretermitted, as it is not complained of. Defendants demurred to these counts on the ground, among others, that "said counts fail to set forth any offense against the laws of the United States."

The District Court sustained the demurrers to both the first and second counts of the indictments, holding that a proper construction of section 19, in the light of the history of its enactment and subsequent codification, evinced an intention of Congress not warranting its application to the facts recited in these counts. The court was brought to this conclusion by what it regarded as necessary deductions from the opinion in *United States* v. *Gradwell*, 243 U. S. 476, while the contention of the Government was and now is that that opinion does not in fact extend to the limit so imputed to it. The conclusion of the lower court amounts to a holding that the Federal courts have no connection with or jurisdiction over bribery at general elections for Federal officers. The opinion appears on pages 22–33 of the Record, No. 575.

There are five principal assignments of error in each case, all of which present for review the court's

judgment in sustaining the demurrers to the first and second counts of the indictments, by which ruling the construction of section 19 of the Criminal Code complained of is crisply presented.

THE STATUTE.

Section 19 of the Criminal Code (35 Stat. 1088, 1092), formerly section 5508 of the Revised Statutes, provides:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, * * * they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

HISTORY OF THE STATUTE.

Enacted May 31, 1870, with the Ku Klux clause ahead of the enjoyment clause (16 Stat. 140).

Readopted June 22, 1874, as section 5508 of Revised Statutes wherein the present arrangement was adopted by the commissioners who prepared the revision.

Survived the slaughter of the Civil Rights bill, not being repealed by the act of February 8, 1894 (28 Stat. 36–37).

Reenacted as section 19 of the Criminal Code by the act approved March 4, 1909, adopting the code

and making it effective on and after January 1, 1910. In the compilation of the code this section was given first place in chapter 3, which deals with "*Offenses against the elective franchise and civil rights of citizens*" (35 Stat. 1088, 1092).

ARGUMENT.

I.

Congress may, by appropriate legislation, protect any right or privilege arising from, created or secured by, or dependent upon the Constitution of the United States.

This proposition is no longer open to question in this court.

United States v. *Reese*, 92 U. S. 214, 217.
Strauder v. *West Virginia*, 100 U. S. 303, 310.
Ex parte Virginia, 100 U. S. 339, 345.
Ex parte Yarbrough, 110 U. S. 651, 663.
Logan v. *United States*, 144 U. S. 263, 293.
Hodges v. *United States*, 203 U. S. 1, 24.
United States v. *Mosley*, 238 U. S. 383, 386.

II.

The right of suffrage in the election of presidential electors, United States Senators, and Members of Congress, is such a right.

In *Ex parte Siebold*, 100 U. S. 371, 388, 389, this court stated:

> * * * It is the duty of the States to elect representatives to Congress. The due and fair election of these representatives is of vital importance to the United States. The government of the United States is no less concerned in the transaction than the State

government is. It certainly is not bound to stand by as a passive spectator, when duties are violated and outrageous frauds are committed. It is directly interested in the faithful performance, by the officers of election, of their respective duties. Those duties are owed as well to the United States as to the State. This necessarily follows from the mixed character of the transaction,—State and National. A violation of duty is an offense against the United States, for which the offender is justly amenable to that government. No official position can shelter him from this responsibility. In view of the fact that Congress has plenary and paramount jurisdiction over the whole subject, it seems almost absurd to say that an officer who receives or has custody of the ballots given for a representative owes no duty to the national government which Congress can enforce; or that an officer who stuffs the ballot box can not be made amenable to the United States. If Congress has not, prior to the passage of the present laws, imposed any penalties to prevent and punish frauds and violations of duty committed by officers of election, it has been because the exigency has not been deemed sufficient to require it, and not because Congress had not the requisite power.

The objection that the laws and regulations, the violation of which is made punishable by the acts of Congress, are State laws and have not been adopted by Congress, is no sufficient answer to the power of Congress to impose punishment. It is true that Congress has not

deemed it necessary to interfere with the duties of the ordinary officers of election, but has been content to leave them as prescribed by State laws. It has only created additional sanctions for their performance, and provided means of supervision in order more effectually to secure such performance. The imposition of punishment implies a prohibition of the act punished. *The State laws which Congress sees no occasion to alter, but which it allows to stand, are in effect adopted by Congress. It simply demands their fulfillment.* Content to leave the laws as they are, it is not content with the means provided for their enforcement. It provides additional means for that purpose; and we think it is entirely within its constitutional power to do so. It is simply the exercise of the power to make additional regulations. [Italics supplied.]

In *Ex parte Yarbrough*, 110 U. S. 651, 663, it is said:

It is not correct to say that the right to vote for a member of Congress does not depend on the Constitution of the United States.

The office, if it be properly called an office, is created by that Constitution and by that alone. It also declares how it shall be filled, namely, by election.

Its language is:

"The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most

numerous branch of the State legislature." Article I, section 2.

The States in prescribing the qualifications of voters for the most numerous branch of their own legislatures do not do this with reference to the election for members of Congress. Nor can they prescribe the qualification for voters for those *eo nomine*. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for members of Congress in that State. It adopts the qualification thus furnished as the qualification of its own electors for members of Congress.

It is not true, therefore, that electors for members of Congress owe their right to vote to the State law in any sense which makes the exercise of the right to depend exclusively on the law of the State.

* * * * *

If the government of the United States has within its constitutional domain no authority to provide against these evils, if the very sources of power may be poisoned by corruption or controlled by violence and outrage, without legal restraint, then, indeed, is the country in danger, and its best powers, its highest purposes, the hopes which it inspires, and the love which enshrines it are at the mercy of the combinations of those who respect no right but brute force on the one hand and unprincipled corruptionists on the other.

See also:

Aczel v. *United States*, 232 Fed. 652, and authorities there cited.
In re Coy, 127 U. S. 731, 752.
Ex parte Virginia, 100 U. S. 339.
Hodges v. *United States*, 203 U. S. 1.
Logan v. *United States*, 144 U. S. 263, 293.
Strauder v. *West Virginia*, 100 U. S. 303, 310.
United States v. *Reese*, 92 U. S. 214, 217.
Wiley v. *Sinkler*, 179 U. S. 58.
Swafford v. *Templeton*, 185 U. S. 487.
Felix v. *United States*, 186 Fed. 685, 688.

In *United States* v. *Mosley*, 238 U. S. 383, a conspiracy to prevent the counting of the vote of a citizen was charged. This court held such a conspiracy within the statute, saying (page 386):

> * * * It is not open to question that this statute is constitutional, and constitutionally extends some protection at least to the right to vote for Members of Congress. *Ex parte Yarbrough*, 110 U. S. 651; *Logan* v. *United States*, 144 U. S. 263, 293. We regard it as equally unquestionable that the right to have one's vote counted is as open to protection by Congress as the right to put a ballot in a box.

In speaking of section 6 of the Enforcement Act of May 31, 1870 (16 Stat. 140), now section 19 of the Criminal Code, the court said (page 387):

> Section 6 being devoted, as we have said, to the protection of all Federal rights from conspiracies against them, naturally did not confine itself to conspiracies contemplating vio-

lence, although under the influence of the conditions then existing it put that class in the front. * * * The section now begins with sweeping general words. Those words always were in the act, and the present form gives them a congressional interpretation. Even if that interpretation would not have been held correct in an indictment under section 6, which we are far from intimating, and *if we can not interpret the past by the present, we can not allow the past so far to affect the present* as to deprive citizens of the United States of the general protection which on its face section 19 most reasonably affords. [Italics supplied.]

III.

The right to be free from bribery is included in the general right of suffrage, and is deducible from the above decisions; and is, therefore, together with certain other rights of a somewhat kindred nature, secured to the citizen and protected by section 19 of the Criminal Code.

The single, direct question is whether section 19 of the Criminal Code is effectual in the hands of the Federal Government for the punishment of a conspiracy to bribe qualified voters at a general election, where presidential electors, a United States Senator and Representative in Congress are chosen by the qualified electors of a State. The demurrers admit the facts alleged in the indictments, and it is for the court to determine whether a citizen (as candidate or honest voter) is injured and oppressed in the free

exercise and enjoyment of the right of suffrage, secured to him by the Constitution of the United States, within the meaning of section 19, by a conspiracy the object of which is to corrupt the electorate to the extent of outnumbering the honest votes with purchased ones.

This section deals with Federal rights guaranteed to citizens by the Constitution, and with *all* such Federal rights, and protects them in lump and to the limit. While it may have been conceived in the purpose to protect particular rights of a peculiar class of citizens, the language employed is plain and unambiguous, and Congress having committed itself to its employment is presumed to have intended to bestow full and absolute protection to the extent of such rights. *United States* v. *Mosley*, 238 U. S. 386.

That the language of section 19 is broad enough to cover a conspiracy to injure and oppress citizens in the free exercise and enjoyment of the constitutional right of suffrage by the use of bribery at a general election seems entirely clear. Can it be that the general words of section 19 are broad enough to protect the citizen who votes from personal violence or intimidation (*Ex parte Yarbrough*, 110 U. S. 651), and the election itself from corrupt count and false certification (*United States* v. *Mosley*, 238 U. S. 383), and yet not broad enough to protect the suffrage rights of a citizen from annihilation by the bribery of voters and the consequent undermining of the fabric of representative government? This question answers itself.

The right to have the election of Federal officials free from bribery and corruption arises from and depends on the Constitution of the United States for the same reasons as the right that such elections shall be free from intimidation and from false and fraudulent count. The power and the duty on the part of the National Government arises not solely from protection to the parties concerned, but from the necessity of the Government itself that a right which it has guaranteed shall in fact be protected, viz, the right that every citizen has to be assured by the Federal Government that the President, the Senators, and the Members of the House of Representatives will be elected by the votes of free electors, cast according to their free and unpurchased volitions.

Congress has undertaken to protect its citizens in the enjoyment of rights conferred by the Constitution of the United States, essential to the healthy organization of the Government, and chief among these is the right of having laws enacted and administered by those who do not owe their election to bribery or violence.

Referring to the right protected by section 19, this court in *United States* v. *Waddell*, 112 U. S. 76, said (p. 80):

> The right here guaranteed is not the mere right of protection against personal violence. This, if the result of an ordinary quarrel or malice, would be cognizable under the laws of

> the State and by its courts. But it is something different from that. It is the right to remain on the land in order to perform the requirements of the act of Congress, and, according to its rules perfect his incipient title.
>
> Whenever the acts complained of are of a character to prevent this, or throw obstruction in the way of exercising this right, and for the purpose and with intent to prevent it, or to injure or oppress a person because he has exercised it, then, because it is a right asserted under the law of the United States and granted by that law, those acts come within the purview of the statute and of the constitutional power of Congress to make such statute.

See also, *United States* v. *Lancaster*, 44 Fed. 885.

The distinction between acts of violence and plain methods of bribery and corruption was not before the court in the *Waddell case*, which presented ample evidence of the former mode of persuasion. The passage quoted, however, is clearly indicative of the gist of the offense created by the statute, and suggests the immateriality of the methods employed to attain the prohibited end. In fact, it may safely be asserted that no reported case has ever held employment of force or intimidation essential to an offense under section 19. (See *United States* v. *Mason*, 213 U. S. 115, 125; *United States* v. *Morris*, 125 Fed. 322; *United States* v. *Stone*, 188 Fed. 836, 840.)

In view of its origin, it seems clear that the ultimate purpose of section 19 was quite as much the regular and lawful election of Federal officers, free from bribery or corruption, as the personal security of the

voter. It would be a very inefficient instrument to this great end if it failed to guarantee the free choice of lawful qualified voters and the honest expression of the suffrage rights of the citizen, untainted and unsullied by the use of money. It is inconceivable that Congress intended to prohibit the lesser of the two evils while allowing the greater to flourish.

If the control of elections by Congress is to be more than nominal, the conclusion is inevitable that section 19 is a vital and necessary statute for the punishment of those who conspire to nullify the free will of the voters in the election of Federal officers. Election frauds by means of bribery are no less inimical to the selection of Federal officers by an untrammeled expression of the will of the voters than are acts of violence directed against their persons, or a bald refusal to permit them to prepare their ballots or place them in the box. And if, as has been decided in the *Mosley case, supra*, it is an offense under section 19 for an election board to conspire to make a false return, it is equally an offense for conspirators on the outside to mislead the board into making a false return.

(*a*) IT HAS BEEN HELD THAT FRAUD DIRECTED TO THE PREPARATION OR MANIPULATION OF THE BALLOTS INVADES THIS RIGHT. CONSEQUENTLY IT IS CERTAIN THAT FRAUD OPERATING THROUGH BRIBERY APPLIED TO VOTERS IS EQUALLY OFFENSIVE.

To so arrange the ballots that they will, because of the way they are printed or the confused fashion in which the names of the candidates are set out, nat-

urally be difficult to a particular set of voters is violative of the law because the so doing injures or oppresses them in the attempt to exercise the constitutional right to vote. *United States* v. *Stone*, 188 Fed. 836.

By a conspiracy to bribe at a general election, as the records in these cases fully disclose, a legal vote is wiped out as effectually as if the citizen had never voted—*i. e.*, forcibly restrained from going to the polls—or as if his vote had never been counted, which is precisely the *Mosley case*. What can be the difference between forcibly preventing a citizen from voting, or refusing to count his vote when lawfully cast, and permitting him to vote and then annihilating it by placing an illegal, purchased vote on top of it?

Here the argument is not only that the rights of the citizen were injured by the counting of bribed votes affecting the *result* of the election, but also that he was injured and oppressed in the enjoyment of his rights by having placed in competition with his legal vote the votes of other qualified voters which became corrupt by means of bribery. (See *State ex rel. Newell* v. *Purdy*, 36 Wis. 213, 220, 223; *Cowan* v. *Prowse*, 93 Ky. 156, 168–69.)

We submit that, if a citizen may vote, then his ballot must be counted at its full value, and others have no right to render it impotent and nugatory by putting bribed and illegal votes in competition with it; that a conspiracy to do so is a violation of section 19 of the Criminal Code.

(*b*) THIS RIGHT OF SUFFRAGE SECURED BY THE CONSTITUTION CONSISTS NOT MERELY OF THE RIGHT TO CAST A BALLOT, BUT EQUALLY OF THE RIGHT RESIDING IN EACH HONEST VOTER TO HAVE HIS VOTE OFFSET ONLY BY OTHER VOTES HONESTLY CAST.

This general right includes the right—

(*a*) To cast the ballot without personal violence or the threat of it. *United States* v. *Aczel*, 219 Fed. 917 (Dist. Ct.); *Aczel* v. *United States*, 232 Fed. 652 (C. C. A.).

(*b*) To have the votes counted as cast and certified as correctly counted. *United States* v. *Mosley*, 238 U. S. 383.

The Government asserts that this general right is furthermore inclusive of—

(*c*) The right to have honest votes measured against honest votes, and that there is an oppression with respect to this right whenever honest voters by their ballots must not only outnumber the honest adverse votes of their fellow citizens, but also such additional number as adverse corruptionists have venally purchased. *Commonwealth* v. *Rogers*, 181 Mass. 184, and cases cited.

In *Ex parte Yarbrough*, *supra*, the court said (pp. 662, 663):

> This duty does not arise solely from the interest of the party concerned, but from the necessity of the government itself, that its service shall be free from the adverse influence of force and fraud practiced on its agents, and that the votes by which its members of Congress and its President are elected shall be the

> *free votes of the electors*, and the officers thus chosen, *the free and uncorrupted choice of those who have the right to take part in that choice.*
>
> This proposition answers also another objection to the constitutionality of the laws under consideration, namely, that the right to vote for a member of Congress is not dependent upon the Constitution or laws of the United States, but is governed by the law of each State, respectively.
>
> If this were conceded, the importance to the general government of having the actual election—the voting for those members—free from force and fraud is not diminished by the circumstance that the qualification of the voter is determined by the law of the State where he votes. It equally affects the government, it is as indispensable to the proper discharge of the great function of legislating for that government, that those who are to control this legislation shall not owe their election to *bribery* or violence, whether the class of persons who shall vote is determined by the law of the State, or by the law of the United States, or by their united results. [Italics supplied.]

Here is a clear statement by this court that fraud is as objectionable as force, and that there must be a free election of freemen.

Similarly, in *Commonwealth* v. *Silsbee*, 9 Mass. 417, 418, it was held that "repeating" at a town meeting was an offense at common law. The court said:

> In town meetings, every qualified voter has equal rights, and is entitled to give one vote

for every officer to be elected. *The person who gives more infringes and violates the rights of the other voters,* and for this offense the common law gives the indictment. [Italics supplied.]

In *People* v. *Hoffman*, 116 Ill. 587, 599, it is said:

> Elections are free, where the voters are subjected to no intimidation or improper influence, and where every voter is allowed to cast his ballot as his own judgment and conscience dictate. Elections are equal, when the vote of every elector is equal, in its influence upon the result to the vote of every other elector,—when each ballot is as effective as every other ballot. * * * When the ballot box becomes the receptacle of fraudulent votes, the freedom and equality of elections are destroyed.

And in *Patterson* v. *Barlow*, 60 Pa. St. 54, 76, it is stated:

> That election is free and equal where all of the qualified electors of the precinct are carefully distinguished from the unqualified and are protected in the right to deposit their ballots in safety, and unprejudiced by fraud.

It is submitted, therefore, that each qualified elector has a right guaranteed by the Constitution to free, fair elections, which right is protected by section 19 of the Criminal Code.

Indeed this appears to be the proper inference from the *Mosley case*, for there is no reason to read that case as confining the right of suffrage to casting a ballot and having it counted. There is a right that

the vote shall have its proper weight and be placed in competition with those votes only which are fairly and rightfully cast. How does it benefit a citizen to have his vote cast and counted if its potency be entirely destroyed by votes induced away from their voluntary course and made adverse to his by bribery? Why should the right recognized in *Mosley's case* not be extended to the much more serious and subtle offense of bribery?

IV.

Any conspiracy to interfere with or prevent the free exercise or enjoyment of this constitutional right of suffrage is a violation of section 19 of the Criminal Code, not merely because of the injury to the citizen, but because he is injured with respect to the exercise of a right which the Constitution has interested itself to secure to him.

The statute is applicable for the protection of "any citizen" (all citizens) without any limitation. The rights or privileges protected by the statute are, however, limited. It embraces and protects only those which are secured to the citizen "by the Constitution or laws of the United States," but it does include all such rights whether constitutional or merely legal. *Felix* v. *United States*, 186 Fed. 685, 688.

Every citizen of the United States has such a right under the Constitution in connection with elections for Representative, etc. (*Mosley's case*, 238 U. S. 383). This right he can enforce himself by mandamus, injunction, or action for damages, as he successfully

did in *Wiley* v. *Sinkler*, 179 U. S. 58, and *Swafford* v. *Templeton*, 185 U. S. 487, and as subdivision 3 of section 1980, R. S., expressly provides.

Section 19 did not declare this right or provide for enforcing it. It declared protection to rights guaranteed by the United States, and provided punishment for any nullification of the free exercise of those rights. This declared right attaching to citizenship of the United States is that there shall be no conspiracy to injure the citizen in regard to its exercise with respect to elections. Congress has indicated how closely connected are the rights of the United States and of its citizens. (See *Logan* v. *United States*, 144 U. S. 263, 294, 295.)

It can not be denied that under the Constitution and laws of the United States citizens properly qualified have the right to submit their names to the electorate for presidential electors, United States Senators, and Representatives in Congress. The Government is so formed that citizens must be chosen for Federal offices, and of necessity it follows that the right given entitles the citizen to a fair ballot and an honest count, free from bribery or corruption of any kind.

In *United States* v. *Gradwell*, 243 U. S. 476, this court (p. 480) said:

> It must be admitted that the people of the United States and so their government, considered as a political entity, have an interest in and *a right to honest and fair elections.* [Italics supplied.]

The right exists to have the elections for Federal candidates conducted fairly, and is necessarily essential to the existence of the Government. All the rights given, created, or secured by the Constitution of the United States are not found in acts of Congress. (See *In re Neagle*, 135 U. S. 1; *In re Quarles*, 158 U. S. 532; *Motes* v. *United States*, 178 U. S. 458, 462; *Logan* v. *United States*, 144 U. S. 263; *Hodges* v. *United States*, 203 U. S. 1; *Rakes* v. *United States*, 212 U. S. 55; *United States* v. *Lancaster*, 44 Fed. 885, 896; *Felix* v. *United States*, 186 Fed. 685.)

V.

The methods or means employed in carrying out the conspiracy to violate the right and whether or not they also offend State laws is immaterial.

What the Government is attempting to punish by the indictments in these cases is a conspiracy to injure and oppress citizens in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States; *e. g.*, the right to participate in an election free from bribery which nullifies the proper weight of their votes. Under section 19 it is immaterial that bribery is the sole element of such a conspiracy. The test is whether or not the citizen has been injured or oppressed in the free exercise or enjoyment of a right secured by the Constitution and laws of the United States, and not whether the means employed to accomplish that end may or may not be otherwise criminal under the laws of the State or of the United States.

If in pursuance of a conspiracy a citizen were seized on his way to the polls on election day, and restrained of his liberty to prevent him from voting, it would be easy to argue in a prosecution under section 19 that this was a subterfuge, and that the United States was attempting to assume jurisdiction of crimes cognizable by the State, to-wit, assault and battery and kidnapping; and it would be just as plausible to say that because the United States had no jurisdiction to punish assault and battery and kidnapping, therefore it had no jurisdiction to punish a conspiracy where a citizen was to be deprived of his constitutional rights in those ways, or, as in the instant cases, by means of bribery. Such an argument is wholly fallacious.

VI.

The opinion of this Court in the Gradwell case (243 U. S. 476) considered and applied.

The recent case of *United States* v. *Gradwell*, 243 U. S. 476, is not decisive of this appeal, for the reason that it does not touch the question here presented. That opinion does hold that section 37 of the Criminal Code has no application to elections, reaching that result partially by means of a recital of the origin and history of the statute, and partially on reasoning deemed sufficient to force the conclusion that the bribery of voters does not constitute a fraud on the United States as a political entity.

The *Gradwell case* does furthermore hold that candidates in State party primaries have not at stake in such elections those rights which are granted and

protected by the Constitution or laws of the United States. But the *Gradwell case* does not hold that section 19 of the Criminal Code is inapplicable to or fails of protection to the constitutional and legal rights of citizens appertaining to the exercise of suffrage in general Federal elections. Quite to the contrary, the *Gradwell case* approvingly recites that section 19 is applicable to certain conspiracies against the Federal elective franchise, giving the *Mosley case* as authority for this statement; adding, however, that the scope of the law can not be extended to the limit of making it an agency for enforcing a State primary law, particularly such an one as was there shown to have been enacted by West Virginia.

This opinion can not be distorted into a decision undermining the Mosley opinion, or into an announcement that section 19 is not an effective agency for protecting the constitutional rights of citizens of the United States against conspiracies aimed at the denial of those rights, regardless of whether the acts done in furtherance of the conspiracy have likewise been outlawed by other enactments or not.

Again, it is noteworthy that two of the defendants convicted of a conspiracy under section 19 of the Criminal Code in *Aczel* v. *United States*, 232 Fed. 652 (1916), and sentenced to imprisonment in the United States penitentiary at Leavenworth, Kans., filed in this court on June 4, 1917, a motion for leave to file petitions for writs of habeas corpus, upon the ground, *inter alia*, that the conviction and sentence were *coram non judice* and void, and that their cases

should be governed by the rule laid down in the *Gradwell case. However, the court denied the motion upon the authority of United States v. Mosley.* (See 244 U. S. 650, 651.)

CONCLUSION.

It is respectfully submitted that the judgment of the District Court, sustaining the demurrers to counts one and two in the indictments, was erroneous and should be reversed.

WILLIAM C. FITTS,
Assistant Attorney General.

DECEMBER, 1917.

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United States of America, in the Supreme Court.

THE UNITED STATES, PLAINTIFF IN ERROR, *vs.* EDWARD BATHGATE, ET AL., DEFENDANTS IN ERROR,	No. 575
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THE UNITED STATES, PLAINTIFF IN ERROR, *vs.* ROBERT URICHO, ET AL., DEFENDANTS IN ERROR,	No. 580

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION.

BRIEF FOR DEFENDANTS IN ERROR.

Statement of the Case.

Defendants in error in each of the above cases were indicted in the District Court of the United States for the Southern District of Qhio, Western Division, at

the October Term, 1916, under Sections 19 and 37 of the Criminal Code of the United States for an alleged conspiracy to bribe electors and thereby to injure, oppress, threaten and intimidate candidates for Federal offices, and voters in the free exercise and enjoyment of certain alleged rights and privileges alleged to be secured to them by the Constitution and Laws of the United States, and for alleged conspiracy to defraud the United States by corruptly conspiring to purchase and debauch a Federal Election by bribery.

The indictments in all of the cases are identical, except as to names, and contain in each instance three counts, of which the first two purport to be drawn under Section 19 of the Criminal Code, and the third under Section 37 thereof.

The defendants in error in each case demurred to each of the several counts and the court sustained their demurrers thereto. To this ruling of the court the Government now brings proceedings in error in this court.

PART ONE.

ANALYSIS OF THE INDICTMENT.

At the outset it is desirous to examine the indictments with a view to ascertain, so far as is possible, exactly what is charged therein as a *matter of fact*, in order to test the question whether as a *matter of law* the indictments and the various counts thereof properly charge any offense against the United States.

The first and second counts of the indictments purport to be drawn under Section 19 of the Penal Code, which is as follows:

"Section 19. If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or Laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

I

The First Count.

The first count of the indictments may be said to be divided in four distinct divisions. The first three divisions are identical in language charging that the citizens alleged to have been injured, etc., are the Democratic candidates for Presidential Electors, mentioned in the first division, the Democratic candidate for United States Senator, mentioned in the second division, and the Democratic Representative in Congress, mentioned in the third division. Without quoting in full these three divisions of the first count, the allegations are in substance as follows:

"The Grand Jurors charge that defendants-in-error and others, throughout the period from October 1st, to November 7th, 1916, at Hamilton County, Ohio, did feloniously conspire, etc.,

to injure, oppress, threaten and intimidate certain Democratic Candidates for Presidential Electors, Senator and Representative, in the free exercise and enjoyment of certain rights and privileges secured to them by the Constitution and laws of the United States, as follows to-wit:

First: Of being Candidates for Presidential Electors, Senator and Representative.

Second: Of having qualified voters vote at said election.

Third: Of having only qualified voters vote for Presidential Electors, Senator and Representative.

Fourth: Of having only votes of qualified voters cast, accepted, received, counted and returned.

Fifth: Of having their election or rejection decided and determined by voters who had not been bribed or votes which had not been purchased.

Sixth: Of having Precinct Boards of Election make true, correct and accurate count and return of legal and only legal votes cast by qualified voters.

(*First*)—By bribing a number of otherwise *qualified* voters and promising them in advance, sums of money to vote against said Presidential Electors, Senator and Representative, and in favor of their opponents, and by causing said voters to purposely and intentionally cast their votes at said election. Voters purchased and bought were certain persons, naming them.

(*Second*)—By causing the Precinct Boards of Election to accept and receive such illegal votes and make untrue, inaccurate and incorrect count and return of votes cast at said election by including same in said count and return.

And that in pursuance of said conspiracy, defendants *injured* said Candidates for Presidential Electors, Senator and Representative, and bribed a large number of qualified voters and caused said illegal and wrongful votes of certain persons, naming them, to be cast and counted at the Election, and caused the Election Boards in the various Precincts to accept such illegal votes and make untrue, incorrect and inaccurate count and return of votes cast at said election by including same in said count and return; that James E. Campbell, et. al, were candidates for Presidential Electors, Atlee Pomerene, candidate for Senator and Edward Brink, candidate for Representative at said election and their names appeared on the ballot to be voted for, each being duly qualified as candidates as aforesaid."

The fourth division of the first count alleges the citizens injured to be, "each and all of the qualified electors who might actually vote at said election in each of the voting precincts of said First Congressional District, and in each of the voting precincts of the State of Ohio." In substance this division of the First Count is as follows:

"And the Grand Jurors further charge that defendants-in-error, and others, as part of the conspiracy aforesaid, did conspire to injure, oppress, threaten and intimidate certain citizens

of the United States, to-wit; each and all of the qualified electors who might actually vote at said election in each of the voting precincts of the said First Congressional District and in each of the voting precincts of the State of Ohio, in the free exercise and enjoyment of certain rights and privileges secured to them and each of them by the Constitution and laws of the United States.

First: Of the right to have votes and ballots for Presidential Electors, United States Senator and Representative in said District, confined to votes and ballots of legal and qualified voters.

Second: Of the right to have the votes and ballots cast and counted at said election for Presidential Electors, etc., confined to those cast by electors who had not been bribed to sell their votes.

Third: Of the right to have each lawful vote and ballot for Presidential Electors, etc. counted at its full strength, unaffected and unimpaired by the casting of votes by men who had been bribed by money, and by counting said votes or any of them.

Fourth: Of the right to have election Boards accept and receive only lawful votes and make true and correct count and return of only lawful votes cast by qualified voters for Presidential Electors, etc.

By bribing a large number of otherwise qualified voters and promising them money in advance to cast their ballots for Presidential Electors, United States Senator and Representative in Congress, and by causing the Election

Boards to accept and receive said illegal votes and make untrue, incorrect and inaccurate count and return thereof by including said illegal votes in said count and return. The men bribed were certain persons, naming them.

And in pursuance of said conspiracy, defendants *injured* each and all the qualified Electors, and so planned, bribed and purchased votes of other qualified voters, naming them, and caused them to vote for Presidential Electors, etc., and caused Election Boards to accept and receive said illegal votes and make untrue, incorrect and inaccurate return thereof, contrary to the form of the statute, etc.

II

Second Count.

The Second Count of the indictment is in many respects similar to the First Count. In substance the second count is as follows:

"The Grand Jurors further present that on November 7th, 1916, *an election was held in the State of Ohio under the laws thereof* and the laws of the United States, for the election of twenty-four Presidential Electors, and United States Senator and Represenative in Congress from the First District, which included a part of Hamilton County, Ohio;

That at the said election James E. Campbell, and others, were candidates for Presidential Electors, Atlee Pomerene, and others, candidates for United States Senator, and Edward H. Brink, and others, candidates for Representative in Congress;

That all of said candidates for Presidential Electors, etc. had been regularly and lawfully chosen and nominated to be such candidates at a primary election held *under the laws of the State of Ohio*;

That from the time of said primary election to and including the 7th day of November, 1916, each was duly qualified under the Constitution and laws of the United States *and the State of Ohio*, to be a candidate for their respective offices;

And the Grand Jurors further present that the defendants, and others, of said Hamilton County and Congressional District, being hereinafter referred to as Defendants, continuously and throughout the period from the 1st day of October, 1916, to and including the 7th day of November, 1916, conspired with other persons unknown to the Grand Jurors, *to injure and oppress certain citizens* of said State and of the United States in the free exercise and enjoyment of certain rights and privileges secured to them respectively by the Constitution and laws of the United States, to-wit, the right and privileges appertaining to several candidates and all legally qualified voters at said election voting in said Congressional District.

First: Of having none of such *legally qualified* voters unlawfully or fraudulently prevented from voting at said election for such candidates as they chose to vote for.

Second: Of having only legal votes cast at said election for any of such candidates, and accepted, counted and returned by the said Election Boards of said County.

Third: Of having such election determined by votes not influenced by bribery, fraud or the wrongful use of money.

And that a description of the means and methods whereby said citizens were so *injured and oppressed* in the free exercise and enjoyment of their rights and privileges by defendants is as follows, to-wit:

Said defendants, in order fraudulently to favor certain candidates, to-wit, The Republican Presidential Electors, Myron T. Herrick, Candidate for United States Senator, and Nicholas Longworth, Candidate for Representative, and secure the election of said candidates instead of the election of the candidates first named, without regard to the true preferences and choice of the voters of said Congressional District, unlawfully were to prevent by force, intimidation and fraud, to be used and practiced upon them by said defendants, as many of the legally qualified voters who were desirous of voting for the candidates first above mentioned, from voting at said election for those candidates, as the said defendants could prevent by those means; and were to procure by bribery, payment and promise of money to them, others of said legally qualified voters desirous of voting for said candidates instead of the candidates first above mentioned, and thereby procure the acceptance, receipt, counting return of such illegal votes by the Election Boards, and of such votes so influenced by bribery, fraud and improper use of money, as aforesaid.

And so the Grand Jurors charge Defendants-in-error, and others, did unlawfully and felon-

> iously conspire to *injure and oppress* citizens in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States, contrary to the form of the statute, etc.

From the above it would seem that the persons alleged to have been injured, etc., are "certain citizens of Ohio and the United States," who are alleged to have been "injured and oppressed" in the free exercise and enjoyment of certain rights and privileges secured to them respectively by the Constitution and laws of the United States; that is to say, the right and privilege appertaining to said several Candidates, and all the legally qualified voters at said election *voting in said Congressional District.*

The indictment further alleges in substance, that the defendants "without regard to the true preference and choice of said legally qualified voters of said Congressional District, unlawfully were to prevent by force, intimidation and fraud, to be practiced *upon them* by said defendants, as many of said legally qualified voters of said Congressional District who were desirous of voting for" the Democratic Candidates, "from voting at said election for those candidates, as said defendants could prevent by those means."

The indictment also alleges that the defendants "were to procure by bribery, payment and promise in advance of or at said election of payment of money to them for so doing, others of said legally qualified voters desirous of voting" for the Democratic Candidates "to vote at said election for other candidates instead of said candidates first above mentioned, and thereby procure the acceptance, receipt and counting in due

course by said election boards of such illegal votes and of such votes so influenced by bribery, fraud and the improper use of money."

From the reading of the indictment it is uncertain who the "certain citizens" mentioned are. Their rights are described, but they are not otherwise identified. Whether the "certain citizens" referred to are (1) all the Democratic candidates and all the voters who voted at the election in the First Congressional District, or (2) the Democratic voters of the First Congressional District who were to be prevented, from voting for the Democratic Candidates, or (3) the Democratic voters who were to be bribed, does not appear.

At this time and solely for the purpose of argument, we will assume that the "certain citizens" referred to, include the first mentioned class, namely, all of the Democratic Candidates for Federal offices and all of the voters, who voted at the election mentioned, in the First Congressional District.

Striped of their verbiage, the charge in the first two counts of the indictment therefore amounts to this; That the defendants conspired to injure, oppress, threaten and intimidate all the candidates for Federal offices at the election mentioned and all the qualified voters of the First Congressional District and the State of Ohio, by conspiring to injure them in the free exercise and enjoyment of their rights as citizens under the Constitution and laws of the United States, by bribing a large number of qualified voters at said election.

While the Second Count contains some allegations intimating use of force, the Government frankly stated to the Court at the time the demurrers were heard, that no use of force was claimed. In his opinion Judge Hollister further said (Case No. 575, Record p. 32):

> "So far as the practical substance of trials under these indictments is concerned, the sole issue is whether or not the defendants were guilty of bribery at the last general election and no subtle legal distinctions or refinements can make anything else out of it."

The brief of the Government (p. 4) in substance adopts this same view. In the last analysis, the fundamental wrong sought to be punished in both counts of the indictment was an alleged conspiracy to bribe voters at a state election of federal officers.

III

Third Count

The third count of the indictment purports to be drawn under Section 37 of the General Code, and to charge a conspiracy to defraud the United States in various manners by bribing voters at election in which federal officers were chosen, The Government concedes (Brief p. 4) that this count falls within the terms of the *United States v. Gradwell*, 243 *U. S., p.* 476. It is therefore unnecessary to consider this count further.

Part Two.

RULES AS TO CONSTRUCTION OF PENAL STATUTES.

Section 19 of the Penal Code of the United States above quoted is a penal statute and is subject to the strict rule of interpretation and construction, to which all such statutes must be subjected.

Section 19 is broad in its terms and yet notwithstanding this fact, cannot be said to have unlimited application. As Mr. Justice Brewer in the case of *James vs. Bowman*, 190 U. S., 127, 141, said:

> "It would certainly be dangerous if the Legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the government."

The interpretation given the statute by the Court, must be so clearly expressed by the enactment itself that the citizens might be said to have fairly understood that which is within their terms and that which which is not. As was said in the case of *United States vs. Brewer*, 139, U. S., 278, 288:

> "Laws which create crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid. *United States v. Sharp*, Pet. C. C., 118."
>
> "Before a man can be punished, his case must be plainly and unmistakably within the statute. *U. S. vs. Lacher*, 134 U. S., 624, 628."

In construing former Section 5508, now Section 19, the court, in holding that the particular conspiracy to oppress and intimidate citizens of the United States did not come within the purview of the terms of the Statute, in the case of *United States vs. Moore*, 129 Fed., 630, 635, 636, said;

> "All who value the blessings of justice administered without respect to persons, and who love liberty regulated by law, will share in the re-

gret that acts like those disclosed in the indictment can happen in our midst, and that apprehension exists that the right here claimed, which is dependent solely upon the laws of Alabama, will not be vindicated and enforced in the tribunals of this State. *Whether these apprehensions be well or ill founded, it would be a less evil to society to leave the wrong unredressed than to usurp jurisdiction to punish the offenders here.*" [Italics supplied.]

The definition of an offense and the classification of offenders are legislative, not judicial, functions, and a Court will not extend the terms of a statute by judicial interpretation to those not beyond a reasonable doubt within the class declared punishable. In the case of *Erbaugh v. United States*, 173 Fed., 433, 435, the Court said:

> "The definition of an offense and the classification of offenders are legislative, not judicial, functions, and one who was not *beyond reasonable doubt* within the class declared punishable by the expressed will of Congress may not be brought within that class after the event by interpretation." [Italics supplied.]

In *Field vs. United States*, 137 Fed., 6, 8, the Court said:

> "A man ought not to be punished unless he falls plainly within the class of persons specified by such Statute. An act which is not *clearly* an offense by the express will of the legislative department must not be made so after its commission by a broad construction adopted by the judiciary . The definition of the offense and the classification of offenders are legislative and not

judicial functions, and where, as in the case at bar, a penal statute is plain and unambiguous in its terms, the courts may not lawfully extend it, by construction, to a class of persons who are excluded from its effect by its terms, because, in their opinion, the acts of the latter are as mischievous as those of the class whose deeds the statute denounces."

A crime cannot be created by *ex post facto* liberality of definition, for *ex post facto* law, by judicial construction, is as pernicious as *ex post facto* legislation.

Harrison vs. United States, 200 Fed., 662, 667.

Erbaugh vs. United States, 173 Fed., 433, 435.

While it is true that in an interpretation of statutes, the Court, in cases of uncertainty, is not restricted to the literal meaning of the words and phrases therein expressed, but may construe the statute in the light of the legislative intent expressed therein, at the same time it is not to be said that the express legislative intent, shown or declared by the adoption of a definite policy by the enactment of a new statute or the repeal or refusal to repeal the old ones, is to be disregarded, merely because the crime sought to be punished is serious and punishment cannot be meted out if express legislative policy is to be heeded.

United States vs. Lacher, 134 U. S., 624, 628.

James vs. Bowman, 190 U. S., 127, 141.

PART THREE
NEITHER BRIBERY NOR A CONSPIRACY TO BRIBE ARE CRIMES UNDER THE LAWS OF THE UNITED STATES AND CANNOT BE PUNISHED BY THE UNITED STATES UNDER PROVISIONS OF SECTION 19 OF THE PENAL CODE.

V.
THE FUNDAMENTAL WRONG SOUGHT TO BE PUNISHED IS BRIBERY AT A FEDERAL ELECTION.

As heretofore pointed out, the fundamental wrong apparently sought to be punished by the indictment is a conspiracy to bribe voters at an election in which Federal officers were to be chosen.

There is no law of the United States which in terms defines and punishes such conspiracy under any existing Federal Statute. In fact, as was said by Judge Hollister, (Case No. 575, Record p. 28),

> "Until the Gradwell case, no prosecution has ever been instituted (Under Sec. 19) in the Courts of the United States, so far as this Court is aware, to punish bribery at a State Election for members of Congress, in the entire history of the United States."

The effort of the Government, therefore, is not to rely upon any Federal law which in terms defines and punishes either a conspiracy to bribe or bribery at an election. It is seeking, rather to stretch the provisions of Section 19, so as to cover the lack of statutory enactments; and thus, in the language of Mr. Justice Clark in the case of *U. S. v. Gradwell*, 243 U. S., 476, at p. 486,

"an attempt is being made to make a new application of an old law to an old type of crime." Although Section 19 has existed for more than forty-seven years, it has never been claimed that it included within its terms the penalty for the punishment of either bribery or a conspiracy to bribe voters at a State election for members of Congress or Presidential Electors. The reasons for this are to be found in the announced policy of Congress of leaving all matters relating to the conduct of elections to the several States, and in the words of Section 19 itself.

IV.
THE LAWS OF THE UNITED STATES AS TO BRIBERY WERE REPEALED IN ACCORDANCE WITH THE POLICY OF CONGRESS TO LEAVE THE CONDUCT OF FEDERAL ELECTIONS TO THE STATES.

The framers of the Constitution vested the discretionary power over elections primarily in the State Legislatures, and ultimately in the National Legislature, by virtue of the provisions of Section IV, Article 1, of the Constitution of the United States, as follows:

> "The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but Congress may at any time make or alter such regulations, except as to the places of choosing Senators."

The history of Congressional legislation under the powers thus conferred is fully set forth in the dissenting opinion of Mr. Justice Lamar in the case of *United*

States v. Mosley, 238 U. S., 383, 388 and in the very recent opinion of Mr. Justice Clark in the case of *United States v. Gradwell*, 243 U. S., 476 at page 482, in which the court says (p. 5):

> "Although Congress has had the power of regulating the conduct of congressional elections from the organization of the Government, our legislative history upon the subject shows that, except for about twenty-four out of one hundred and twenty-eight years since the Government was organized, it has been its policy to leave such regulations almost entirely to the States, whose representatives Congressmen are."

In finally summing up the present status of congressional legislation the court said: (p. 485) It is

> "clearly established that the policy of Congress for so great a part of our constitutional life has been, and now is, to leave the conduct of the election of its members to state laws, administered by state officers, and that whenever it has assumed to regulate such elections it has done so by positive and clear statutes, such as were enacted in 1870."

There can be no question but that bribery at elections is one of the matters included within the "regulations" which "Congress may at any time make or alter." In speaking of the congressional enactments of 1870, the court, in the case of *United States v. Gradwell*, supra, at page 483, said:

> "These laws provided extensive regulations for the conduct of congressional elections. They made unlawful, false registration, bribery, voting without legal right, making false returns of votes cast, interfering in any manner with offi-

cers of elections and the neglect by any such officer of any duty required of him by State or Federal law;"

Of the Act of 1870, Section 5507, 16 Stat. 141, making it a crime among other things, for any person to "prevent, hinder, control or defraud another person from exercising the right of suffrage * * * by means of * * * bribery * * * ", was not repealed by the Act approved February 8th, 1894, 28 Stat., 36, but was declared unconstitutional in the case of *James v. Bowman*, 190 U. S., 127, and was never subsequently re-enacted.

The conclusion is therefore irresistable that legislation relating to bribery at elections is one of the matters embraced within the general conduct of elections to be regulated by state laws.

If this is true, the rights of the citizen voter with reference to bribery at elections are rights derived wholly from the states, and not in any part from the constitution and laws of the United States.

Whether or not Congress is pursuing the right policy is a legislative question. The extended comment of this court quoted in the Government is brief from *Ex parte Siebold*, 100 U. S., 371, 388, 389, and *Ex parte Yarbrough*, 110 U. S., 651, 663, was made at a time when the "Enforcement Act" was still the law, and relates to a different policy than that to which Congress now commits itself. These cases decided under these radically different conditions can be of no assistance in the present case.

Stated in a few words, the logical facts are these: The present policy of Congress leaves to the States the establishment of the "regulations" for the conduct of elections for Federal officers, and bribery at elections is one of the matters to be regulated by the States.

From this it must follow, therefore, in the light of this general policy, that no subtle argument or ingenious reasoning can read into Section 19 that which the controlling policy of Congress, fully recognized by this Court, declares is not to be found there.

The Government argues that bribery at an election affects the potency of the citizen voter's vote, and that, by reason of that fact, he is injured and oppressed within the meaning of Section 19. In other words, that bribery injures the vote of the citizen voter by reducing its strength in contributing to the result of the election. When this is admitted, we are brought no nearer a conclusion. We are still confronted with the question as to whether such an injury is embraced within the terms of Section 19; and this question is answered by the fact that under the existing policies of Congress the remedy for such injuries is left to State laws and the administration of them by State officials.

The Government further argues, in effect, that the right to vote *per se* entitles the citizen to a fair ballot and an honest count, free from bribery or corruption of any kind. If this is true, then the mere maintenance of Section 19 upon the Statute Books of the United States amounts to a re-enactment of the "Enforcement Act" of 1870, and a denial of the policy of Congress relating to elections, which has been recognized by this Court. Logically pursued to its conclusion, the violation of every State enactment safeguarding the honesty and fairness of elections is perforce of this argument incorporated into the laws of the United States. Under this view, all that would be necessary to be proved was, that the violation, either contemplated or completed, had the requisites of a conspiracy.

In the case at bar, as in the case of *United States v. O'Toole*, 243 U. S., 476, the Ohio Primary Election Law passed February 2nd, 1914 and approved February 14th, 1914, 104 O. L., 8, superseded the act of Congress of June 4th, 1914, 38 U. S., Stat. at Large, 384, which was enacted by Congress for the conduct of the nomination and election of Senators until other provision should be made by state legislation.

Relative to the law with regard to the election of Presidential Electors it was said by Mr. Justice Gray in *In re Green*, 134 U. S., 377, 380,:

> "Congress has never undertaken to interfere with the manner of appointing electors, or, where, (according to the now general usage) the mode of appointment prescribed by the law of the State is election by the people, to regulate the conduct of such election, or punish any fraud in voting for electors; but has left these matters to the control of the States.

This case was decided on March 24th, 1890 before the repeal of the sections of the "Enforcement Act," and at a time when Section 19 was in substantially its present form, and the situation as found to exist then by Mr. Justice Gray, has not been altered to the present time.

V

Neither Bribery nor a Conspiracy to Bribe at a Federal election, Injure the Citizen in Enjoyment of Rights Secured under the Constitution or Laws of the United States, and Neither can be Punished under Section 19 of the Penal Code.

Section 19 is the only section now in force of all the legislation enacted subsequent to the Civil War, which

can be said to have any bearing upon any matter pertaining to elections.

It cannot be urged, however, with the slightest show of reason that this statute is applicable to the facts as set forth in the first and second Counts of the indictment.

Section 19 punishes a conspiracy;

(1) To injure, oppress, threaten or intimidate any citizen,

(2) In the free exercise and enjoyment of any right or privilege, secured to *him* by the constitution and laws of the United States.

Let us ascertain what the full purport of this language is,—

(1) *To injure, oppress, threaten or intimidate any citizen.*

The indictment simplifies the inquiry in as much as relating to bribery, it alleges only that the conspiracy to bribe "injured" the voters and candidates named.

What does the word "injure," as employed in the statute and used in the indictment mean?

In speaking of these provisions of Section 19, Judge Rose, in the case of *United States v. Stone*, 188 Fed. Rep. 836, 839, said:

> "The statute is highly penal. The punishments prescribed by it are more severe than many of those which are prescribed for other election offenses. In such a statute doubtful words are not to be extended beyond their natural meaning in the connection in which they are used. (page 839) * * * *
>
> "In this case, the government does not ask that the word "injure" shall be given any other construction than that which is usually has.

"Unlawfully to deprive a citizen of the United States of his right to vote at a congressional election is to injure him in any ordinary use of the word "injure."

"The Supreme Court has said of this statute that it covers any conspiracy to prevent the exercise of any of the rights protected by it, or to throw obstruction in the way of exercising such right, or for the purpose or with intent to prevent its exercise. *United States v. Waddell*, 112 U. S. 80.

"It does not follow that such a construction of the statute will make it the all-embracing enactment that defendants describe. A voter who votes for a Republican candidate for Congress may be in a very general sense injured by a fraudulent practice which results in the return of a Democratic candidate which would not otherwise have been returned. Indeed, every citizen, whether he voted for the Republican or the Democratic candidate, or for neither, might be said to be injured by a fraudulent return. It does not follow, however, that either the Republican voter or the citizens in general are thereby injured in the sense meant by this statute. A public nuisance injures all the public. For all that, it is only some person who is injured in some way differing from that of the great body of the public who at common law may maintain an action for the damage resulting from such nuisance. It is not every wrongful act which alters the result of the election which is punishable under the section in question. *It must be some act which is intended to*

prevent some citizen or citizens from exercising their constitutional rights." (page 840.) [Italics supplied].

Judge Rose had sitting with him in the case Judge Morris, District Judge, who concurred in the above opinion.

It thus appears that to bring the case within the terms of Section 19, the injury sought to be punished must be personal and individual and not a mere public injury, which affects not only the voters of a particular congressional district or the entire state but, in a broad sense, the voters of all the States, If this were not true every known violation of the election laws of Ohio and each of the several states, which tended in theory or fact to affect the result of a congressional election, could be punished under this Section, if participated in by two or more persons, thereby nullifying by judicial construction the clearly established policy of Congress.

It is in this purely personal and individual character of the injury suffered that the case of *United States vs. Mosley*, 238 U. S., 383, is to be distinguished from the instant case. As Judge Hollister said in his opinion, (Case 575, Record p. 28):

> "Moreover, an analysis of the Mosely case shows the gravamen of the charge was not the injury to the voter through fraud affecting the result of the election. The injury to him was in not counting his vote, and the injury was to him alone, and for that reason only. It so happened that the votes in eleven precincts were not counted; but the principle would be the same if the officers had, by conspiring to that end, omitted to count one vote."

(2) *In the free exercise and enjoyment of any right or privilege secured to him by the Constitution and laws of the United States.*

It is said in the indictment that the various candidates and voters named therein were injured in their "rights," which are variously set forth, by the alleged conspiracy of the defendants to bribe certain electors named in the indictment and others whose names are unknown. In other words the voters and candidates named are alleged to have the "right or privilege" to have the election free from bribery.

Obviously, the "right or privilege" mentioned in the statute and referred to in the indictment must be a *legal* right, secured by the Constitution and laws of the United States, as distinguished from a *moral* right.

Obviously the voter may have a moral right to have an election free from bribery, but the question is, do the Constitution and Laws of the United States transform the moral right into a legal right.

As Judge Hollister said, (Case 575, Record p. 30):

> "Of the classes named in counts one and two, whose rights are said to be affected by the alleged illegal acts complained of, are also all the voters of the first congressional district. It is said that logically the rights of these voters, as well as the rights of candidates, include not only the free exercise of voting and the counting of their votes, but also an election free from the corruption of bribery, for otherwise their votes would not be effective. If logic were the test, the Government's position would be strong, but logic cannot prevail as against clear congressional intention, the latest declaration of which, as relating to elections, is found in the *Gradwell* case."

Furthermore, the policy of the Courts with reference to the strict construction of penal statutes will not permit the Government to start with the proposition that every citizen has a right to vote and by successive deduction extend the primary legal right to a secondary moral right; namely, the right to an election free from bribery.

As Judge Hollister said in his opinion, (Case 575, Record p. 31):

> "While we may by construction say first, a citizen has a right to vote, and, by construction from this say, second, a voter has a right to have his vote counted, and by construction from this, third, that, therefore, he has a right to an election free from bribery, we are still not far advanced toward the conclusion that Section 19 was passed to protect the voter in the right to have an election free from bribery. It will not do, by successive deductions of this kind, to construe a man into the penitentiary, however heinous his offense may be. There must be a plain and unmistakable congressional intention to make what he has done an offense against the United States. *United States v. Lacher*, 134 U. S., 624. 628.

VI

RIGHTS AND PRIVILEGES SECURED TO CITIZENS IN FEDERAL ELECTIONS BY THE CONSTITUTION AND LAWS OF THE UNITED STATES.

It has been shown that neither the United States nor its citizens has any existing right or privilege under the

Constitution and laws of the United States to have a Federal election free from bribery. This being true, the question naturally arises as to what rights or privileges of the citizens, with respect to Federal elections, Section 19 protects.

In the indictment the citizen is referred to with respect to two different relations which he bore to the election in question: first, as a voter and, second, as a candidate.

In discussing the provisions of Sec. 19, it is therefore only necessary to discuss rights and privileges of citizens with respect to the phases of citizenship brought in issue by the indictment. In other words the questions are:

First: What are the existing "rights and privileges" of the qualified voters mentioned in the indictment at a Federal election, secured to them under the Constitution and laws of the United States?

Second: What are the rights and privileges of the candidate with respect to the same matters?

RIGHTS AND PRIVILEGES OF THE VOTER

Under the decisions of the various Federal Courts, it would appear that, with reference to Federal elections, the citizen who possesses the qualifications to vote, has the "right and privilege" to do so. This it has been held is "a right or privilege *secured to him* by the Constitution and laws of the United States" within the terms of Sec. 19.

Ex parte Yarbrough, 110 U. S. 651;
Wiley v. Sinkler, 179 U. S. 58;
Stafford v. Templeton, 185 U. S. 487;
United states v. Moore, 129 Fed. 630;
Felix v. United States, 186 Fed. 685;

United States v. Stone, 188 Fed. 836;
United States v. Aczel, 232 Fed. 652;
Mosley v. United States, 238 U. S. 383

Furthermore having the right to vote, the voter also has the right to have his vote counted. *Mosley v. United States*, 238 U. S. 383.

These are the sum total of the "rights and privileges" of the "voter" secured to him by the Constitution and laws of the United States with reference to Federal elections. His rights begin and end with his own vote.

The most convincing authority for this proposition is the very words of the statute in question, "If two or or more persons conspire to injure, oppress, threaten or intimidate *any citizen* in the free exercise or enjoyment of any right or privilege *secured to him* by the Constitution and laws of the United States," etc.

All therefore that the citizen voter has a right to demand at Federal elections under the Constitution and laws of the United States is the free exercise and enjoyment of his right or privilege to cast his vote and have his vote counted.

This is the sole right or privilege that under Sec. 19, he can claim to hold free from a conspiracy to injure, oppress, threaten and intimidate.

With reference to the vote of his fellow citizen, he has nothing to say. When his vote is freely cast and counted, the free exercise of his "right and privilege" under the Constitution and laws of the United States has been accomplished. If other citizens are injured, oppressed, threatened or intimidated, and he has not been so treated, his rights under the Constitution and laws of the United States have not been injured.

If others are willing or unwilling victims of fraudulent practices, he is not thereby hindered or prevented from freely exercising the rights "*secured to him.*"

Judge Rose in *United States v. Stone*, 188 Fed. Rep. 836, at page 838, very aptly states the proposition:

> "A voter who votes for a Republican candidate for Congress may be in a very general sense injured by a fraudulent practice which results in the return of a Democratic candidate, which would not otherwise have been returned. Indeed, every citizen, whether he voted for the Republican or the Democratic candidate, or for neither, might be said to be injured by a fraudulent return. It does not follow, however, that either the Republican voter or the citizens in general are thereby injured in the sense meant by this statute. A public nuisance injures all the public. For all that, it is only some person who is injured in some way differing from that of the great body of the public, who at common law may maintain an action for damages resulting from such nuisance. It is not every wrongful act which alters the result of the election which is punishable under the section in question. It must be some act which is intended to prevent some citizen or citizens from exercising their constitutional rights."

The mere grant of the right to vote and to have the vote counted is not in itself equivalent to the creation of an entire code of laws, regulating for the benefit of each individual voter the conduct of every other voter and establishing the rules and regulations by which an election can be conducted.

This view of the law is borne out by every adjudicated case relating to the right and privilege of citizens to vote in Federal elections, and to the rights and privileges generally of citizens under the Constitution and laws of the United States.

In the case of *United States v. Stone, supra*, the prosecution was had under Sec. 19. The facts in substance charged, that the defendants, who were supervisors of election for Charles County, Maryland, devised a form of ballot so as to make it practically impossible for many of the duly qualified and registered negor voters of said county to vote at a Congressional election. The indictment charged that the defendants conspired to injure a large number of duly qualified and registered negro voters in the free exercise of their right to vote at the election of a Representative in Congress by the preparation of the ballots above named, and stated fully the means by which this was to be accomplished.

It will be observed that the injury complained of was the injury to the individuals who were deprived of their votes. No injury to the candidates who were to be voted for at that election, nor to all the voters of the State or District, was claimed or charged, although the Court intimates that the acts of the defendants could have effected the general result of the election.

In the case of *United States vs. Mosley, supra*, also a prosecution under Sec. 19, it was charged that the defendants, who were officers and a majority of the County Election Board of Blaine County, Oklahoma, injured and oppressed all the voters of eleven precincts in that county, in the free exercise and enjoyment of their rights and privileges, by omitting the votes of said voters from their returns to the State election board.

Here Mr. Justice Holmes held that Sec. 19,—

> "Extends some protection at least to the right to vote for members of Congress."

and that,—

> "the right to have ones vote counted is as open to protection by Congress as the right to put a ballot in the box."

Here again, it will be observed that the injury complained of was the injury to each of the individual voters of the eleven precincts mentioned. No injury was alleged to have been sustained by the candidates for Congress, nor the voters of the State or District. The injury protected was distinct and individual to the voters whose vote was not counted. The indirect result upon the election was an incident. The material fact was that the citizen was deprived of his vote.

As Judge Hollister rightly said, (Case 575, Record p. 28);

> "Moreover, an analysis of the Mosley case shows the gravamen of the charge was not the injury to the voter through fraud affecting the result of the election. The injury to him was in not counting his vote, and the injury was to him alone, and for that reason only. It so happened that the votes in eleven precincts were not counted; but the principle would be the same if the officers had, by conspiring to that end, omitted to count one vote."

In the case of *United States v. Aczel, supra*, the first count of the indictment was under Section 19, and this was the only count subsequently passed upon by the Circuit Court of Appeals. It was there alleged that the defendants injured, etc., certain citizens of the United States, naming them, in the free exercise and

enjoyment of rights secured to them by the Constitution and laws of the United States, by force, threats and intimidation and by the use of pistols and other firearms, etc., thereby preventing them from exercising and enjoying the right and privilege of voting at a general election for candidates for United States Senator and Representative in Congress.

Here again the injury alleged was the injury to individuals, who were deprived of the free exercise and enjoyment of rights individually possessed by them. No injury was alleged to have been sustained by candidates for the offices voted for, nor by all of the voters of the State of Indiana, nor all of the voters of the Congressional district.

The same principle will be found to have been followed out by the Court in *Ex parte Yarbrough*, *supra*, where the rights of a negro citizen were injured, etc. by acts of the defendants in intimidating such citizen by assault, for the purpose of preventing and hindering him in the exercise of his right to vote for member of Congress.

The principle is still further illustrated in the line of cases protecting other rights under Section 19, which arise under the Constitution of the United States, and it will be found upon examination of these cases that the court has never undertaken to make the section applicable to the protection of any other right than the individual right of the individual citizen.

United States v. Waddell, 112 U. S. 76;
Logan v. United States, 144 U. S. 263;
In re Quarrels & Butler, 158 U. S. 532.

RIGHTS AND PRIVILEGES OF THE CANDIDATE

In the enumeration of the rights of citizens in the case of *United States v. Moore*, 129 U. S. 630, 633, it is said that among other rights and privileges secured to the citizens of the United States is, "the right to hold and seek office under the Federal government." This right is apparently based upon the principle that the Constitution having created the office and established in part the qualifications of those who might seek it, thereby by implication extended to the citizen the right of seeking and holding office under the Federal government.

So far as the adjudicated cases go, this is the entire right of the candidate;—that is, the right to seek and hold office. As found by Judge Hollister, this right was in no wise injured under the provisions of Section 19, by any of the facts set forth in the indictment in these cases. Relative to this matter, the court said (Case 575, Record p. 28):

> "In the indictments under consideration, the right of the candidates to be candidates was not injured, and, so far as appears the votes cast for them were counted: the right of voters to vote was not interfered with, and, so far as appears, their votes were counted. The gravamen of the charge involves an injury through the change in the result of the election brought about by bribery of voters. That result affected not only these candidates and all the voters in the first congressional district and all the voters in Ohio; but also the candidates for President and Vice President, and all the voters of the United States. The injury growing out of the result of the election was not dealt with in the Mosley case, and

> it may not be going too far to say that the exact point decided in that case is not applicable to these indictments at all, and that these indictments are to be ruled by the Gradwell case, and not by the Mosley case."

As a citizen, the candidate has such rights only with reference to an election free from bribery as are possessed by every other citizen; no more and no less.

His interest in the result is no greater and no less than the interest of the majority of voters, who may or may not adopt him.

And it may further be said that his right of being a candidate goes no further, in the creation of a code of laws pertaining to the honesty of elections, than the right of the voter himself.

In Austin on Jurisprudence, Vol 1, page 410, (3d. Ed.,) it is said that:

> "The test of a right is, that independently of positive provision, the acts or forbearance enjoined are not incapable of being enforced civilly, or in the way of a civil action, at the discretion or pleasure of the party towards whom they are to be done or observed.

If this be the test what enforceable rights, under the Constitution and laws of the United States with reference to bribery or a conspiracy to bribe at elections, have all the voters of the State, or a Congressional District, or a candidate? Can it be seriously said that a civil suit for damages could be maintained by either class of citizens?

Since the rights of the candidate and the voter are identical, the principles which apply to the rights of the voter above referred to, equally apply to the rights and privileges of the candidate.

CONCLUSION.

The policy of Congress with reference to the conduct of elections declared, defined and interpreted, is the ultimate test of any judicial conclusion with reference to the issues involved in this case. Whether the adoption of this policy is right or wrong is a legislative question. In the absence of any common law rights, the rights secured by the Constitution and Laws of the United States are judicial questions. With full recognition of these facts and in accord with the established law as interpreted by this court, we submit that the effort of the Government "to make a new application of an old law to an old type of crime" should not prevail.

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